REPORT

ON A

STATE DEPARTMENT OF JUSTICE FOR NORTH CAROLINA

SUBMITTED BY THE

COMMISSION ON STATE DEPARTMENT OF JUSTICE

TO THE

GOVERNOR OF NORTH CAROLINA

AND TO

MEMBERS OF THE GENERAL ASSEMBLY

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January 4, 1939.

HONORABLE CLYDE R. HOEY,
Governor of North Carolina,
Raleigh, North Carolina.

SIR:

The Commission appointed by Your Excellency to study the advisability and feasibility of establishing a Department of Justice for the State of North Carolina and to make its recommendations on that subject has the honor to submit the following report:

The General Assembly of 1937 adopted and ratified on March 10, 1937, Resolution No. 29 reading, in part, as follows:

> "A JOINT RESOLUTION AUTHORIZING THE GOVERNOR OF THE STATE OF NORTH CAROLINA TO APPOINT A COMMISSION COMPOSED OF FIVE MEMBERS TO INQUIRE INTO THE ADVISABILITY AND FEASIBILITY OF ESTABLISHING A DEPARTMENT OF JUSTICE FOR THE STATE OF NORTH CAROLINA.
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> "Whereas, there has been state-wide discussion with regard to the advisability of establishing in the State of North Carolina a Department of Justice; and
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> "Whereas, it is necessary before such department be established, that a complete research and study be made relative to this subject; Now, therefore,
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> *Be it resolved by the House of Representatives, the Senate concurring:*
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> "Section 1. That the Governor of the State of North Carolina be and he is hereby empowered and directed to appoint a commission to be composed of five members to be selected by him; that the purpose of said commission shall be to make a study of the advisability and feasibility of establishing a State Department of Justice, to make a study of the probable cost of maintaining said department, to inquire into the probable advantages or disadvantages of such an undertaking on the part of the State, and to make such recommendations as to it might seem right and proper to the Governor of the State of North Carolina and to the next General Assembly."

At the same session the General Assembly, by Chapter 447, ratified March 23, 1937, proposed an amendment to Article 3 of the State Constitution to be voted upon at the general election in 1938. This Act of the Legislature, subject to the approval of a majority vote in said general election, provides that a new sec-

tion shall be added to Article 3 of the State Constitution, reading as follows:

> "Section 18. The General Assembly is authorized and empowered to create a Department of Justice under the supervision and direction of the Attorney General, and to enact suitable laws defining the authority of the Attorney General and other officers and agencies concerning the prosecution of crime and the administration of the criminal laws of the State."

On November 8, 1938, this amendment was ratified by the people at the polls, with the result that the General Assembly is now "authorized and empowered to create a Department of Justice under the supervision and direction of the Attorney General."

The studies made by the Commission reveal that the term "Department of Justice" has a variable meaning in different states and in the federal government. At one extreme it means a department of the government having direction and control over all agencies involved in the administration of the criminal law. At the other extreme it is little more than a name loosely applied to law enforcing agencies with little, if any, control or supervision by a central authority. Between these extremes may be found varying degrees of co-ordination and control. In formulating its recommendations for the organization of a Department of Justice for North Carolina the Commission has avoided both extremes, believing that a conservative middle course is more in keeping with the historical development of our law enforcement activities and will furnish the safest basis for future growth and expansion.

The Commission is not unaware of the probability that future growth of the State's population, the concentration of people in cities and towns and the ramifications of modern crime may soon suggest, if not require, an even greater degree of co-ordination and control over these same criminal law administering agencies. There is little doubt in the Commission's mind that the constitutional amendment authorizing the General Assembly "to enact suitable laws defining the authority of the Attorney General and other officers and agencies concerning the prosecution of crime and the administration of the criminal laws of the State" gives the General Assembly a free hand and places beyond all questioning its power to expand the Department of Justice to meet the problems of criminal law enforcement as they develop in the future.

The Commission submits its report and recommendations under the following titles:

I. Outline of plan of organization of a State Department of Justice for North Carolina, together with a discussion of the present needs, probable ad-

vantages and estimated costs of the Commission's recommendations.

II. Supplemental Legislation.

III. Summary of estimated costs and probable advantages of the Department of Justice as recommended.

IV. Analysis of the term "Department of Justice" as it is used (a) by the Federal government, (b) by State governments, and (c) by the Commissioners on Uniform State Laws.

The Commission met, organized and began its studies and investigations shortly after its appointment in the summer of 1937. It has invited suggestions and criticisms from all sources. It has met with Committees of Police Chiefs, Sheriffs, Solicitors, Executive Committees of the two Bar Associations in the State and held a public meeting in the hall of the House of Representatives in Raleigh for open discussion of the problems involved. It has held many meetings of its own members. It acknowledges with appreciation the help received from representatives of the law schools of the State and from State and local officials generally.

Respectfully submitted,

L. P. MCLENDON, *Chairman*
DONNELL GILLIAM
W. B. CAMPBELL
G. LYLE JONES
DICKSON MCLEAN
Commission on State Department of Justice.

PART I

OUTLINE OF PLAN OF ORGANIZATION
OF A
STATE DEPARTMENT OF JUSTICE FOR NORTH CAROLINA
TOGETHER WITH A
DISCUSSION OF THE PRESENT NEEDS, PROBABLE ADVANTAGES AND ESTIMATED COST
OF THE
COMMISSION'S RECOMMENDATIONS

I

ADMINISTRATION

The general supervision and direction of the State Department of Justice should be vested in the Attorney General.

DISCUSSION:

The General Assembly has thus far given the Governor considerably more supervision and control over the administration of the criminal law than it has given the Attorney General: (1) *as to police agencies,* the General Assembly of 1937 authorized him to appoint a "sufficient" staff of trained investigators with statewide jurisdiction directly charged with the investigation of a considerable number of specific crimes and subject to assignment by the Governor to assist any state or local law enforcing officer in the investigation of any crime; and through his powers of appointing state department heads and commission members he can influence policies of the state highway patrol and other departmental agencies charged with the investigation of specific types of crime; (2) *as to prosecution in the criminal courts,* the General Assembly has authorized him (a) to employ such special counsel as he may deem proper to appear in "any court in the state or in any other state or territory or in any United States Court . . . in any matter . . . or controversy . . . in which the state of North Carolina is interested," (b) to direct the Attorney General "to appear for the state in any court or tribunal in any cause or matter . . . in which the state may

be a party or interested"—words which if taken at their face value authorize the Governor, through the Attorney General or special counsel or both, to exercise at least concurrent jurisdiction with solicitors in state and local courts in any criminal proceeding when in his opinion the public interest requires it; (3) *as to probation,* the General Assembly in 1937 authorized him to appoint a state probation commission with power to select a director and staff and thus enabled him to influence probation policies; (4) *as to prisons,* the General Assembly has authorized him to appoint the State Highway and Public Works Commission, to recommend the appointment of the State Board of Charities and Public Welfare, and to appoint or recommend the appointment of the Boards of various correctional institutions, and thus to influence the policies of penal and correctional institutions; (5) *as to pardons and paroles,* the Constitution of North Carolina since 1776 has given the Governor the power of pardon, commutation and parole and pursuant to this authority the General Assembly has authorized him to set up a parole commission and a staff of parole supervision to investigate and advise him as to pardons and paroles and thus he has complete supervision and control over parole and pardon policies; (6) *miscellaneous,* the General Assembly of 1933 provided for the state radio system to be set up under a department head appointed by the Governor; the General Assembly of 1937 gave him control over criminal court statistics, scientific laboratory facilities and fingerprints and authorized him to combine these facilities in a Bureau of Identification under his office, with a trained personnel to assist state and local officers.

It is equally clear that in allocating law enforcing powers to the Governor and to the Attorney General, the General Assembly has not been motivated by any consistent policy of criminal law administration. For from the beginning the Attorney General has been considered the chief law officer of the state. In early Colonial days he represented the state in all criminal and civil litigation and was the legal advisor to the Governor and other state officials. It is still his duty "to defend all actions in the Supreme Court in which the state (is) interested or a party." It is still his duty to go into the trial courts when his duties as counsel and advisor to state officials take him there, or when

specific statutes authorize him to intervene on his own volition, or when he is requested to intervene by the Governor or either branch of the General Assembly. He is still legal advisor to the Governor and other state officials and to all "departments, agencies, institutions, commissions, bureaus or other organized activities of the state." He is required "to consult with and advise the solicitors, when requested by them, in all matters pertaining to the duties of their office." In recent years his office has in practice become a center to which officials of local governmental units and subdivisions turn for legal opinions and advice.

It is therefore logical and thoroughly in keeping with the history and traditions of the office that the Attorney General should be the administrative head of the State Department of Justice, keeping in mind the constitutional provision vesting in the Governor "the Supreme Executive power of the State." The constitutional amendment ratified on November 8, 1938, expressly requires that the Department of Justice, if established at all, be established under the supervision and direction of the Attorney General.

See Part IV, for a discussion of the meaning of the term "Department of Justice" as used (1) by the Federal government, (2) by State governments, (3) by the Commissioners on Uniform State Laws.

Estimated Cost. The plan suggested by the Commission for establishing a Department of Justice requires increases in the personnel and equipment of the Attorney General's office. These increases together with an estimate of their cost are specifically set forth under the following divisions and are summarized at the end of this report. Though this personnel is assigned to divisions in this report, it is contemplated that the entire personnel should constitute the Attorney General's staff and be subject to assignment by him to duties in the Department other than the duties of the particular divisions to which they may be allocated. To illustrate: Trained lawyers as Assistant Attorneys General in charge of the Division of Criminal and Civil statistics, Legislative Drafting and Codification of statutes, Criminal Investigation, etc. should be available to supplement the efforts of the Assistant Attorneys General in the Division of Criminal Prosecution and Civil Litigation when occasion requires. This arrangement would

promote flexibility and permit at all times a maximum utilization of the resources of the department.

II

DIVISION OF CRIMINAL AND CIVIL STATISTICS

A. A division of criminal and civil statistics should be established in the Department of Justice. It should be the duty of this division to collect and correlate information on criminal law administration, such as: the number of crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishments, appeals, together with the age, race and sex of the offender and such other information concerning crime and criminals as may appear significant and helpful. This information should be correlated with detailed information on the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of the successive links in the machinery set up for the administration of the criminal law, such as: the agencies of investigation and arrest, trial, punishment, probation, prison, parole and pardon.

B. It should likewise be the duty of this division to collect and correlate similar information on the workings of successive links in our machinery for civil law administration, so as to show the volume of civil litigation, including such commissions as the Utilities Commission, the Industrial Commission, etc., its geographical distribution, the condition of the dockets in the several courts and counties and such other information as may appear significant and helpful.

C. The value of these statistics will depend: first on their completeness and therefore they should extend to all agencies involved in criminal and civil law administration from the institution of process to its conclusion; second, on their scientific study, analysis and comparison and therefore should be correlated with statistics gathered by federal agencies so as to present local conditions agains the state background, and state conditions against the national background. The results should be made periodically available to the Governor and each session of the General Assembly for their guidance in such matters as

(1) Authorization of the number of superior court judges;
(2) The number of terms of both civil and criminal courts;
(3) The volume of work done by the several solicitors and the necessity of supplying them with additional aid and assistance;

(4) The organization of county, recorder's and police courts, having either criminal or civil jurisdiction, or both;
(5) Utilization of facilities of the Federal Bureau of Investigation, Bureau of the Census, and other Federal agencies with a view of avoiding needless expense to the state.

D. To this end the Commission recommends: That all the duties heretofore imposed by statute upon the Attorney General with respect to criminal statistics and all similar duties imposed on the Bureau of Identification and Investigation, established by Chapter 349 of the Public Laws of 1937, be transferred to the Department of Justice and assigned to this division, and that existing laws be extended to include the collection and correlation of criminal and civil statistics on the workings of all agencies involved in criminal and civil law administration as outlined in the foregoing section, and that authority be conferred upon the Attorney General to compel all public officials to furnish the required statistical data.

DISCUSSION:

For the first hundred years of the State's history little if any effort was made to collect statistical information on the administration of justice in the courts. The General Assembly required the Attorney General: *in 1868,* to collect such information on criminal cases in the Superior Courts and in the Supreme Court; *in 1919,* on criminal cases in Recorders' Courts established under the Recorder's Court act of that year; *in 1937,* from *all* inferior courts excepting courts of Justices of the Peace, and in the same year authorized the Governor in his discretion to set up a Bureau of Identification to collect court statistics previously collected by the Attorney General.

The Commission is of the opinion that this statistical information should also be collected from courts of Justices of the Peace. There has never been any reliable statistical information upon the workings of these courts. The plan here proposed will present the facts for the first time and will enable the Legislature, as well as the people generally, to know the truth about these courts and to provide for their regulation intelligently.

The courts constitute only one link in the state's law enforcing machinery. The Commission is of the opinion that statistical information should likewise be collected from police and investigative agencies on the steps taken before the cases get into court

and from agencies of probation, penal and correctional institutions, parole and pardon officials having charge of offenders after the courts have finished their work, and all of this information analyzed and correlated so as to give a comprehensive picture of the problems with which they have to deal and of the machinery dealing with them.

For similar reasons the Commission recommends that similar statistical information be collected from all agencies involved in civil law administration from the issuance of process to the final disposition of the cause.

Under the title Supplemental Legislation, the Commission is recommending the adoption of a policy looking toward a flexible system of terms of the superior court. The statistics gathered, studied, and analyzed by this division will be indispensable in the plan there proposed.

The Commission is convinced that the present conditions in a number of the judicial districts make it very essential that the solicitors in such districts should be furnished with adequate assistance. Assuming that the division of criminal and civil statistics operates efficiently, the facts with respect to conditions in each judicial district will be accurately known and the Attorney General will be enabled to furnish assistance where assistance is really needed.

Estimated Cost. Much of the machinery for collecting this statistical information already exists: in the Probation Commission, the State Highway and Public Works Commission, the office of the Commissioner of Pardons and Paroles, the State Board of Charities and Public Welfare, the State Bureau of Identification and Investigation, the State Highway Patrol. Each of these agencies needs to keep records and assemble statistical information to serve its own purpose; but these agencies are parts of a larger governmental structure and there is every reason why their records should be so kept and their statistical information so assembled that all of it may serve the larger plans and purposes of the governmental structure of which they are a part.

To correlate the existing record keeping and statistical machinery, to extend it over uncovered or inadequately covered fields, to supplement its personnel and equipment, it is estimated that the Department of Justice would need an Assistant Attorney

General at $3000 per year with a statistical clerk and clerical assistant at $1800 per year, initial outlay of $3000 for equipment, $500 for postage and incidental expenses. The foregoing estimate of the initial outlay and cost of maintaining this division would be much greater but for the use that may be made of the facilities of the Federal Bureau of Investigation, the Bureau of the Census and perhaps other Federal agencies, thereby eliminating much of the printing, postage and tabulating cost.

It should be the duty of this division to secure the co-operation of existing agencies to eliminate all unnecessary duplication in collecting statistics, keeping records, and printing reports. The Commission strongly recommends that in designing the new building for the State Department of Justice the physical arrangement should be such as to make the statewide records conveniently accessible to all concerned with their use.

III

DIVISION OF LEGISLATIVE DRAFTING AND CODIFICATION OF STATUTES AND ADVISORY SERVICES TO GOVERNMENTAL UNITS AND AGENCIES

A. This division would absorb the present drafting bureau and its services would be available to the Governor, various State officials and departments, members and committees of the General Assembly, counties, cities and towns, in the drafting, redrafting and criticism of all legislation—particular attention being paid to questions of constitutionality of proposed legislation.

B. This division would recodify, or procure recodification, and bring to date the existing statutes and thereafter codify the statutes biennially, with appropriate annotations, so as to avoid the necessity, which has so often arisen in the past, of the appointment of periodic commissions for this purpose.

C. This division would be charged with the duty of answering all appropriate inquiries from governmental units and agencies.

D. This division, acting through the Attorney General, would recommend to the Governor and the General Assembly legislation which the work and investigations of the department render advisable.

E. This division would recommend to the General Assembly systems of rules and procedure for all administrative agencies authorized by statute to exercise judicial or quasi judicial functions and to approve all general rules of procedure adopted by such agencies under legislative sanction.

DISCUSSION:

A. *Drafting Bureau:* The need for aid in the drafting of legislation has been recognized for many years and a drafting bureau has been in existence for a number of years. Such work should be done in the Department of Justice by trained lawyers who are familiar with the legislative history of the State and who are constantly concerned with the construction, application, and codification of the statutes. It is believed that an efficient staff of lawyers in this division would prove themselves of great value to the Governor, and to various State officials and departments as well as to the important committees of the General Assembly. In time, these men would come to be recognized as experts in legislative drafting, and because of the fact that the same staff of lawyers will be responsible for the codification of the statutes of the State and for the recommendation of statutory changes it is believed that much ill-advised and ill-considered legislation would be avoided.

A legislative drafting bureau was established in 1915. The statute provided:

> The North Carolina historical commission is authorized and required to appoint a properly qualified person to be known as a legislative reference librarian, whose duty it shall be to collect, tabulate, annotate, and digest information for the use of members and committees of the general assembly, and other officials of the state and of the various counties and cities included therein, upon all questions of state, county, and municipal legislation; to make references and analytical comparisons of legislation upon similar questions in other states and nations; and to have at hand for the use of the members of the general assembly the laws of other states and nations as well as those of North Carolina, and such other books, papers, and articles as may throw light upon questions of consideration. It shall be his duty to keep the compilations of the public laws of the state revised to date.
>
> It shall also be the duty of the librarian to classify and arrange by proper indexes, so as to make them accessible, all public bills relating to the aforesaid matters heretofore introduced in the general assembly, and he shall perform such other duties as may be required of him by the North Carolina historical commission. He shall also, upon request by members of the general assembly, secure all available information on any particular subject named.

In 1933 the legislative reference librarian was transferred to the attorney-general's department. The 1933 statute provided:

> The department and office of the legislative reference librarian heretofore existing as a part of the historical commission shall be and the same is hereby transferred to the department of the attorney-general . . . . In addition to the duties prescribed by section six thousand one hundred and forty-seven (6147) of the consolidated statutes for the legislative reference librarian, the said officer shall act as assistant in the office of the attorney-general and in addition to the duties required by section six thousand one hundred and forty-seven (6147) of the consolidated statutes, shall render to the attorney-general such assistance as he may be able to give in the conduct and administration of the office and duties of the said attorney-general and shall perform such duties as may be assigned to him by the attorney-general consistent with and not to interfere with the duties now required of him by law.

B. *Codification of Laws.* The biennial codification of the statute law of North Carolina by this division would undoubtedly save the State a considerable sum of money. In some states this has been done by codifying the statutes in several volumes under the general subjects of civil procedure, criminal law and procedure, etc., with biennial "pocket additions" resulting in a saving of great expense to the State as well as to the citizens who find it necessary to purchase the Code.

The laws of North Carolina have been codified at irregular intervals during the past 250 years. The first codification was enacted in 1716, but no printed codification existed until the appearance of Swann's Revisal in 1751. No other codifications were prepared in the colonial period.

Pursuant to legislative authorization, James Iredell issued a *Revisal* in 1789, and Francois X. Martin published a *Collection of Statutes* (1792), *Collection of Private Acts* (1794), and a *Revisal* (1804).

In 1817 a commission composed of Chief Justice Taylor, Judge Potter and Bartlet Yancey was appointed to prepare a code which was published in 1821, and was known as Potter's Revisal.

In 1837, the *Revised Statutes,* prepared under legislative authority by Governor Iredell, Chief Justice Nash and Justice Battle, was issued. Almost twenty years later, Commissioners Briggs and Moore prepared *The Revised Code* (1855).

After the ratification of the Constitution of 1868, *Battle's Revisal* was published in 1873, but the General Assembly never officially adopted it. *The Code of North Carolina* (1883), prepared by Dortch, Manning and Henderson was the first official code after the Civil War.

The Revisal of 1905 was prepared under the supervision of Commissioners Womack, Gulley and Rodman.

The late Judge Pell, who assisted the Commission in the preparation of *The Revisal of 1905,* brought out an annotated edition of the Revisal in 1908, and published a supplement in 1911. This code was kept up to date by Gregory's *Supplements* to Pell's *Revisal,* issued in 1913, 1915 and 1917.

The last official compilation of laws to be issued was the Consolidated Statutes (1919; index and supplement—1924). Dean L. P. McGehee and Dr. A. C. McIntosh prepared the code under the direction of the Revision Commission composed of Harry W. Stubbs, *Chairman,* Lindsay C. Warren, Harry P. Grier, Stahle Linn and Carter Dalton. The index and supplementary 1924 volume was prepared by Harry B. Hillman, under the direction of a commission composed of E. S. Parker, *Chairman,* Victor S. Bryant, and S. J. Everett.

Since that time no official code has been issued. The Michie Company has issued codes quadriennially with biennial supplements.

C. *Answering inquiries from local units and agencies.* It is logical that this division should also be charged with the duty of answering appropriate legal inquiries from governmental units and agencies. The staff of this division, being continuously engaged in the study of the statutes, the annotation of them, their arrangement and codification, would be peculiarly fitted to perform this increasing volume of work.

Advisory Duties: Civil and Criminal.—State Officials. The Colonial Records reveal the Attorney General advising the Governor and members of his council in criminal and civil matters. This practice continued after 1776 as one of the common law duties of his office. In 1868 the General Assembly specifically directed him "to give when required, his opinion on all questions of law submitted to him by the General Assembly, or by either

branch thereof, or by the Governor, Auditor, Treasurer or any other state officer," and in 1901 and 1925 made him counsel for all "departments, agencies, institutions, commissions, bureaus or other organized activities of the state." *District officials.* The General Assembly in 1868 specifically required the Attorney General "to consult with and advise the solicitors, when requested by them, in all matters pertaining to the duties of their office." Only superior court solicitors were in existence when this statute was passed and apparently its application was confined to them. The words of the statute are broad enough to include the recorders' court solicitors later coming into the law, but the scope of these words has not yet been tested in the courts. *Local officials.* Though there may be some doubt about the law there has never been since 1868 any doubt about the Attorney General's practice of advising not only city and county solicitors but all city and county officials on matters pertaining to their offices. The Attorney General's report in 1868-69 explains the origin of the practice: "The substitution of Superior for County Courts, with its displacement of county attorneys, (Prosecutors in the county courts of Pleas and Quarter Sessions) always consulted respecting the duty of county commissioners and other functionaries, with the disposition now to refer to the Attorney General as the law officer of the state and a common adviser, alone furnishes business enough for the office." By 1902 the Attorney General is answering inquiries from county, city and town officials "in compliance with a custom which appears to be time honored in this department." While these opinions have been recognized as entirely unofficial, the Attorney General's report in 1930 considers them "as aiding in the development of a uniform practice in the several counties and towns on the subjects covered." And the Attorney General's report in 1936 says that this practice "will be continued as long as legislative acquiescence and the limitations of the department permit."

D. *Recommendations as to Legislation.* The work of codifying laws, answering inquiries and drafting statutes, together with the varied duties of the Attorney General's office puts it in a peculiarly advantageous position to recommend changes in the laws.

In 1869 Attorney General L. P. Olds wrote in his report to the Governor:

"Reviewing the laws so constantly, owing . . . to the daily queries thereon, it is deemed a duty to call attention to oversights or deficiencies existing through legislation necessarily rapid, with the request that they . . . may receive from the approaching Assembly, such attention as to it shall seem proper."

The Attorney General then proceeded to outline thirteen recommendations concerning a variety of matters: official bonds, election laws, school committees, township highways, powers of county commissioners, the North Carolina Railroad charter, tenancy of land, registration of deeds, the revenue laws, and improvement of the public squares in the city of Raleigh.

In the years since 1869, attorneys general have sometimes made comprehensive recommendations, sometimes made only a few recommendations often limited to the field of the criminal law, and sometimes have failed to make any recommendations.

To illustrate: In 1894, Attorney General Osborne made recommendation with respect to several changes in the criminal law, the anti-trust laws, the powers of the State Canvassing Board and the Codification of North Carolina laws. In 1898, Attorney General Walser recommended that the statutes be codified, that the carrying of concealed weapons be made a felony, and that the State and the defendant be allowed an equal number of peremptory challenges in the trial of a case. In 1902 Attorney General Gilmer recommended that provision be made for obtaining information as to literacy of or illiteracy of persons convicted of crime.

In 1904 and 1906 no recommendations were printed in the reports. In 1908, Assistant Attorney General Hayden Clement outlined thirteen recommendations touching on many phases of law: criminal procedure, holding companies, municipal corporations, domestic corporations, abolition of estates by entirety, execution of persons convicted of capital crimes, increase of judicial districts, taxation, the oyster law, police courts, prescription liquor, weights and measures, and the election laws.

In 1910 Attorney General Bickett made a number of recommendations, dealing chiefly with criminal law and procedure, and the court system.

In 1916, 1920, 1922, 1924 and 1926 no recommendations as to legislation were published in the Attorney Generals' Reports. In 1930 Attorney General Brummitt recommended that the election laws and school laws be re-written.

In 1936 Attorney General Seawell recommended that the Attorney General's Department handle all the State's legal business, that a State Department of Justice be created, and a scientific crime laboratory be set up.

E. *Procedure for Administrative Agencies.* The steadily increasing number of administrative agencies authorized by statute to exercise quasi judicial functions makes it rather imperative that some supervision should be given to such agencies and that some degree of uniformity should be provided in the rules of procedure adopted by them. By the very nature of things, such rules of procedure cannot be absolutely uniform, but the Department of Justice, by exercising the right of approval, may at least insure the citizens of the State that these boards and agencies will conduct themselves according to accepted and approved legal standards. The Attorney General, with the aid of this division, would be peculiarly qualified to make recommendations to the General Assembly for improvements in our statutory law. This is an important function of the Department of Justice. It is conceivable that as the result of continuous study of the statute law of the State the Attorney General would be able to recommend statutory changes, from time to time, which would save both the State and its citizens from much unnecessary and expensive litigation.

The table below indicates the increase of state departments and agencies, starting with 5 in 1776, increasing to 30 by 1900, and to 115 by 1938.

1776—Governor
1776—Legislature
1776—Secretary of State
1776—Attorney-General
1776—State Treasurer
1795—University of N. C. (at Chapel Hill)
1806—Superior Courts
1818—Supreme Court
1845—N. C. School for White Blind and Colored Blind and Deaf
1852—Superintendent of Public Instruction
1856—State Hospital at Raleigh

1858—Board of Medical Examiners
1868—Lieutenant-Governor
1868—State Auditor
1868—State Board of Education
1869—State Central Prison
1870—Board of Public Buildings
1871—Trustees of State Library
1875—State Hospital at Morganton
1877—Commissioner of Agriculture
1877—Fayetteville Colored Normal
1879—State Board of Health
1880—State Hospital at Goldsboro
1883—Trustees of Law Library
1885—University of N. C. at Raleigh
1891—University of N. C. at Greensboro
1891—Negro A. & T. College
1891—Elizabeth City Colored Normal
1891—Soldiers' Home
1894—N. C. School for the Deaf
1901—Textbook Commission
1901—State Board of Elections
1901—State Board of Agriculture
1901—State Board of Embalmers
1903—Appalachian State Teachers College
1903—Historical Commission
1903—N. C. Board of Veterinary Examiners
1905—Western Carolina Teachers College
1905—Winston-Salem Teachers College
1905—State Board of Pharmacy
1907—Eastern Carolina Teachers College
1907—North Carolina Sanitorium
1907—Stonewall Jackson Manual Training and Industrial School
1907—State Board of Osteopathic Examiners
1909—State Library Commission
1909—Crop Pest Commission
1909—N. C. Orthopedic Hospital
1909—State Board of Examiners in Optometry
1911—Cherokee Indian Normal School
1911—Caswell Training School
1913—Confederate Women's Home
1915—State Board of Dental Examiners
1915—State Board of Architectural Examiners
1917—State Board of Charities and Public Welfare
1917—Adjutant General
1917—State Board of Vocational Education
1917—Joint Committee for Agricultural Work
1917—Municipal Board of Control
1917—State Board of Chiropractic Examiners
1917—Board of Nurse Examiners
1918—State Home and Industrial School for Women
1919—State Committee on High School Textbooks

1919—Board of Chiropody Examiners
1921—Commissioner of Revenue
1921—State Board of Pensions
1921—Board of Commissioners of Navigation
1921—State Training School for Negro Boys
1921—Board of Registration for Engineers
1923—State Bureau of Identification
1923—Eastern Carolina Industrial Training School
1923—N. C. College for Negroes
1924—North Carolina Park Commission
1925—Advisory Budget Commission
1925—State Sinking Fund Commission
1928—State Board of Assessment
1925—Department of Conservation and Development
1925—State Board, Veterans' Loan Fund
1925—State Board of Accountancy
1925—State Licensing Board of Contractors
1926—N. C. Home for Colored Girls
1927—Industrial Commission
1929—State Highway Patrol
1929—Board of Farm Crop Seed Improvement
1929—State Board of Barber Examiners
1931—Division of Purchase and Contract
1931—Commissioner of Labor
1931—Commissioner of Banks
1931—Advisory Banking Commission
1931—Local Government Commission
1931—State Highway Prison Camps
1931—Board of Plumbing and Heating Contractors
1933—State School Commission
1933—Highway and Public Works Commission
1933—Utilities Commissioner
1933—Associate Utilities Commissioners
1933—Assistant Director of Budget
1933—Commissioner of Parole
1933—Motor Vehicle and Inspection Board
1933—State Board of Housing
1933—State Thrift Society
1933—State Bar Council
1933—Cosmetic Art Examiners
1935—Director, State Employment Service
1935—Advisory Board of Paroles
1935—State Textbook Rental Commission
1935—State Rural Electrification Authority
1935—State Commission for the Blind
1935—Rural Rehabilitation Corporation
1935—State Planning Board
1935—Board of Photographic Examiners
1935—Board of Boiler Rules
1937—State Bureau of Identification
1937—State Alcoholic Beverage Control Board
1937—State Probation Commission

Estimated Cost. It is estimated that the cost of this division would be: an Assistant Attorney General at $4,500, a drafting and research assistant at $3,000, two law clerks at $1,800 each, two stenographers at $1,200 each.

IV

DIVISION OF CRIMINAL LAW INVESTIGATION

A. It would be the duty of this division to render expert investigative service, including facilities for criminal identification and scientific aids to crime detection: to the prosecuting staff of the Attorney General's office in cases where the Attorney General appears in behalf of the State and to the Solicitors of Superior and Inferior Courts in cases of public interest; to State agencies charged with the investigation of violations and the enforcement of specific laws and to sheriffs, coroners, police and other law enforcing agencies; to the State Highway and Public Works Commission in the arrest of escaped prisoners and to the Probation and Parole Commissioners in the apprehension of offenders violating the terms of probation, pardon and parole.

B. This division would employ a sufficient number of trained investigators: to work under the direction of the Attorney General in cases where he appears in behalf of the State and in cases where state agencies are charged with the enforcement of specific laws; and to be assigned by the Attorney General to aid the solicitors as the work in the several solicitorial districts may demand. Investigators when assigned to a judicial district would be under the immediate direction and orders of the solicitor of the district. The investigators for this highly skilled type of service would be licensed attorneys and possess the qualifications now required of investigators employed by the Federal Bureau of Investigation.

C. This division would work in harmony and correlate its efforts with the Federal Bureau of Investigation so as to utilize to the fullest extent its clearing house of fingerprints and facilities for criminal identification, together with its crime detection laboratory and scientific aids to crime detection, so as to avoid needless duplication of available facilities.

D. To this end the functions of the Bureau of Identification and Investigation created by Chapter 349 of the Public Laws of 1937 should be transferred to this department and all its functions, except the collection of statistics, assigned to this division; the State Highway Patrol should be transferred to this department and assigned to this division; and existing laws should be appropriately extended to carry out the foregoing recommendations.

DISCUSSION:

It is to be noted that both the Bureau of Identification and Investigation and the State Highway Patrol are to be transferred to this division. The Commission is of the opinion that the maintenance of the Bureau of Identification and Investigation, separate and apart from the Department of Justice, could not be justified under any circumstances. The State Highway Patrol is peculiarly a law enforcement agency charged with the primary responsibility of enforcing the highway and motor vehicle laws, and it, therefore, logically belongs in the Department of Justice unless the State wishes to develop and perpetuate a multiplicity of state law enforcing agencies.

Agencies for Investigation of Crime and Apprehension of Criminals. City, county, and state governmental units have developed city, county, and state law enforcing agencies to enforce their laws.

The City Policeman. The policeman came into North Carolina with the rise and growth of cities and towns where the concentration of people created special law enforcement problems. In different cities and towns he was called the "town constable," the "town marshal," the "town policeman." The word "policeman" is now the accepted name for town and city law enforcing officers.

The County Sheriff, Constable, Coroner. The sheriff came into North Carolina with the organization of the county, and from the beginning he has been the county's principal law enforcing officer. The increase of counties has increased the number of sheriffs from one to one hundred. These sheriffs are assisted by deputies ranging from one or two in smaller counties to fifty or more in the larger counties, some of them in part time and some in full time service.

Along with the sheriff and his deputies came the constable, chosen first by districts, then elected by townships for a term of two years—some of them in part time and some in full time service.

The coroner came into North Carolina with the organization of the county. His principal law enforcing duties are to investigate homicides—and if he thinks advisable hold an inquest be-

fore a jury of six—to act as sheriff when no person is properly qualified as sheriff, and to execute process in all suits in which the sheriff is a party.

In later days some counties have added the rural police, authorized to enforce criminal laws, sometimes under the supervision of the sheriff and county commissioners.

Statewide Law Enforcing Agencies. It was perhaps natural that railroads, with tracks and rolling stock crossing local governmental units should first feel the need for law enforcing officers not restricted by city and county lines. As early as 1871 steam railroad companies were authorized by the General Assembly to apply to the Governor for the appointment of special officers, with the powers of city police on railroad lines wherever they ran and on railroad property wherever located within the state. For similar reasons in 1907 railroad station masters and railroad conductors were given similar powers. And on the same theory the *state highway patrolman* came into North Carolina in 1929 to promote law and safety on the highways. The Highway Patrol originally set up under the State Highway Commission, was in 1933 placed under the supervision of the Commissioner of Revenue, who is authorized to make rules and regulations for the conduct of the members of the Patrol. The number of state highway patrolmen increased from thirty-six in 1929 to one hundred and twenty in full time law enforcement in 1935. A 1937 statute removed the limitation on the number of patrolmen, and placed the matter in the discretion of the Commissioner of Revenue subject to the approval of the Governor and the Budget Commission.

The General Assembly in 1937 also authorized the Governor in his discretion "to appoint a Director of the Bureau of Identification and Investigation . . . and a sufficient number of assistants . . . with the same power of arrests as is now vested in the sheriffs." Thus far a Director and five investigators have been appointed to this Bureau.

Investigative assistants for solicitors and other law enforcing agencies. Not only the increase in the volume of crime but the ramifications of modern crime make it necessary that the State provide trained criminal investigators for use at any point in the State where their services may be required. The degree of suc-

cess to be attained by the use of such persons is in direct ratio to their training, character and ability. The Federal Bureau of Investigation has demonstrated beyond the per adventure of doubt that men employed to do this character of work should be well educated and licensed lawyers. As such, they know the rules of law concerning the various crimes and what is and what is not admissible evidence in the courts. With such knowledge they are able to economize their time and the time of the courts in the trial of important criminal cases.

By assigning such investigators to work with and under the orders of the solicitor as the chief prosecuting officer in the district, it is believed the very highest degree of efficiency may be obtained. Such plan avoids the danger of conflict between "a State officer" on the one hand and "a local officer" on the other. It would tend to coordinate the efforts of all and would give to the solicitor assistance of the kind which he could not obtain in any other way except at great expense to the local community.

With reference to the entire personnel of this division, the Commission cannot emphasize too strongly the absolute necessity of selecting every individual in this department upon merit alone and without regard to any political influence. The same thing may be said of the personnel in the entire department, but in the division of criminal law investigation the slightest departure from this injunction may bring the division and the whole department into disrepute with the people of the State. Undoubtedly the greatest aid in the cultivation of respect for the criminal laws of the State and for the courts is to be found in the high character and fair conduct of law enforcement officers.

More than a quarter of a century ago Governor Bickett, then Attorney General, urged the necessity for special investigators not unlike those provided for in the 1937 statute. In his biennial report for 1909-10, Attorney General Bickett wrote:

"There are a number of criminal statutes the proper enforcement of which requires a vast amount of preliminary investigation. The State should be in a position to ascertain all the material facts before beginning a criminal action. The individual gets his facts before he starts his suit. The State is compelled to begin an action before it can find out the facts.

"To remedy this defect a substantial contingent fund should be placed at the disposal of the Governor, to be used, in his discretion, in assisting the Solicitors or the Attorney-General in making investigations when there is reason to believe that a law is being violated and the facts can not be ascertained through the usual channels. The Solicitors and the Attorney-General should be authorized to summon witnesses and examine them before starting a criminal proceeding, and should also be authorized to send out agents to make investigations in regard to violations of the criminal law, and all parties should be required to answer questions put to them by the Solicitors, the Attorney-General or their duly authorized agents."

The 1937 General Assembly authorized the Governor, in his discretion, to establish a State Bureau of Identification under the Governor's office and to appoint a Director of the Bureau and a sufficient number of assistants and stenographic and clerical help.

> "Sec. 5. The Director of the Bureau, and his assistants, are given the same power of arrests as is now vested in the sheriffs of the several counties, and their jurisdiction shall be state-wide. The Director of the Bureau, and his assistants shall, at the request of the Governor, give assistance to sheriffs, police officers, solicitors, and judges when called upon by them and as directed. They shall also give assistance, when requested, to the office of the Commissioner of Paroles in the investigation of cases pending before the Parole Office and of complaints lodged against paroles, when so directed by the Governor.
>
> "Sec. 6. The bureau shall, through its director and upon request of the Governor, investigate and prepare evidence in the event of any lynching or mob violence in the state; shall investigate all cases arising from frauds in connection with elections when requested to do so by the Board of Elections, and when so directed by the Governor. Such investigation, however, shall in no wise interfere with the power of the Attorney General to make such investigation as he is authorized to make under the laws of the state. The bureau is authorized further, at the request of the Governor, to investigate cases of frauds arising under the Social Security Laws of the state, of violations of the gaming laws, and lottery laws, and matters of similar kind when called upon by the Governor to do so. In all such cases, it shall be the duty of the department to keep such records as may be necessary and to prepare evidence in the cases investigated, for the use of enforcement officers and for the trial of causes. The services of the Director of the Bureau, and of his assistants, may be required by the Governor in connection with the investigation

of any crime committed anywhere in the state, and when in the judgment of the Governor, such services may be rendered with advantage to the enforcement of the criminal law . . ."

Estimated Cost of Personnel and Equipment. It is estimated that this division would require: one Assistant Attorney General at $4,500, a fingerprint expert at $3,000, a scientific technical expert at $3,000, five investigators at salaries to be fixed by the Attorney General ranging from $1,800 to $3,600, two stenographers at $1,200 each, travel expense $6,000, additional equipment at $6,000. The cost of this division is already covered by the revenues available to the Bureau of Identification and Investigation from bills of cost in criminal cases.

The Commission suggests that consideration be given to the advisability of providing that any agent of the Department of Justice, including the State Highway Patrol, who actually appears and testifies as witness in any case prove his attendance as such, and that there be taxed in the bill of cost the prevailing per diem of said witness, and mileage which in no event shall exceed fifty miles, and that the revenues from the per diem and mileage be paid into the State Treasury and be used to defray the expenses of the Department of Justice. The Commission believes that the funds so accumulated would cover the additional cost of creating and maintaining the Department of Justice.

This cost is estimated on the theory that it is useless for the State to duplicate in Raleigh fingerprint and scientific crime detection facilities North Carolina taxes are already helping to maintain in the United States Department of Justice in Washington. Discussion of existing facilities follows:

FINGERPRINTING FACILITIES IN NORTH CAROLINA

State Fingerprint Bureau. In 1925 North Carolina provided for a State Bureau of Identification, with principal offices in the State Prison, under the control of a deputy warden of the state prison who was to be a "fingerprint expert and familiar with other means of identifying criminals." This deputy warden was directed to outline in the report of the State Prison to the Governor the funds needed to provide full equipment to carry out the provisions of the statute, and the statute directed "the board of trustees of the penitentiary" to establish and maintain the bureau "out of the general appropriation to the state prison."

"Every chief of police and sheriff in the State of North Carolina" was "required (1) to take the fingerprints of every person convicted of a felony," and authorized (2) to "take the fingerprints of any other person when arrested for a crime" whenever he thought it advisable, and (3) to forward these fingerprints with notice of final disposition of the case to the State Bureau of Identification on forms to be furnished by the Bureau.

Pursuant to this authority two sets of fingerprints are taken of each prisoner as he is received at each state prison camp and at the central prison. The prison camp superintendents forward these prints to the central prison office in Raleigh along with the commitment papers and a descriptive record of the prisoner. From this central office they are sent to the Identification Bureau at the state prison for classification and filing. One copy of each set of prints is placed in the files of the Bureau in Raleigh and the other copy is sent to the Federal Bureau of Investigation in Washington. Around 1700 sets of fingerprints are received by the State Bureau in Raleigh each month and around 100,000 sets have been accumulated.

From 1925 to 1938 only the most primitive equipment had been available to the official in charge, and a minimum of that. In 1938 modern equipment was installed. The work first had the part time services of one man, then the full time services of one man with eight prisoners acting as his assistants. No effort has been made to set up a State clearing house of fingerprints for local units on the theory that this would be a useless duplication of the national clearing house in Washington.

The General Assembly in 1937 authorized the Governor of North Carolina "in his discretion, to create in his office a State Bureau of Identification and Investigation, which shall be under the supervision and control of the Governor. . . . The records and equipment of the Identification Bureau now established at Central Prison shall be made available to the said Bureau of Identification and Investigation (to be established in the Governor's discretion) and the activities of the Identification Bureau now established at Central Prison may in the future, if the Governor deem advisable, be carried on by the bureau newly established.

Separate fingerprint equipment has been purchased for this Bureau and the Director states that:

"The fingerprint file is being built up as rapidly as possible, and at the present time facilities are available to accommodate up to five thousand prints. Additional prints are being received daily from the Prison Department, sheriffs' offices, police departments and other law enforcement agencies throughout the State.

"When sufficient office space is available the Bureau will have a completely equipped photographic dark room, with all the cameras, printers, enlargers, dryers, etc. necessary to prepare photographs and other visual evidences necessary for court presentation."

Local Fingerprint Bureaus. Around twenty local fingerprint bureaus have been established in North Carolina: some by cities, some by counties, some by joint city-county action. The most recent of these is the Raleigh-Wake County Bureau established in 1937 and it may serve to illustrate the better organized and equipped local bureaus. The staff consists of one man in charge with a salary of $200 per month, and two assistants with salaries of $150 per month. The cost for all equipment in the office ran between $1,500 and $2,000. The city and county split equally the cost of salaries, equipment and maintenance. The total operating cost at present is around $500 per month, split as follows: Director's salary, $200; one assistant's salary, $140; other assistant's salary, $140; supplies, around $20.

The law requires every police officer and sheriff to take the fingerprints of every person convicted of a felony and authorizes them in their discretion to take the fingerprints of every person arrested for any crime. Pursuant to this law around a tenth of the police departments and less than a tenth of the sheriffs take the fingerprints of felons on arrest. Fewer still take the fingerprints of persons arrested for lesser crimes. Some are beginning to take the fingerprints of all arrested persons. Where fingerprints are taken at all, usually two sets of prints are taken. One is placed in the local files and the other is sent to the National Clearing House conducted by the Federal Bureau of Investigation in Washington.

INTERRELATIONS OF FEDERAL, STATE AND LOCAL FINGERPRINT BUREAUS

The practical value of fingerprints in the work of law enforcement has been demonstrated beyond question. All city, county, state and federal law enforcing agencies, however small, should be equipped to take them, should be acquainted with their uses, and should maintain their respective files of the fingerprints they themselves have taken.

The question then arises, should the state in addition to its own fingerprint bureau for its own officers and others who may care to use it, operate a clearing house of fingerprints for city and county units. In cities and counties where the volume of crime requires, local fingerprint bureaus may be profitably established. For similar reasons, state law enforcing agencies should have a fully equipped and adequately staffed fingerprint bureau for the daily use of all state law enforcing officers and to assist local officers who have none of their own.

If population were fixed and static, if people spent their lives on the spots where they were born and never crossed a city or county line, the local fingerprint files of each locality might be sufficient to itself. If state lines were barriers which people never crossed, and if behind these barriers people moved within the orbits of their respective states, each state could build a clearing house sufficient to itself and its own local units. But with a moving population, with railways, highways and airways to move on, with city, county, state and even federal boundaries as incidents on the way, the inadequacy of local files and state clearing houses is apparent and the national clearing house between state and local units becomes essential.

The state fingerprint bureau needs the national clearing house and would clear direct with it without any intermediary. The local bureaus need the national clearing house and at present they are clearing with it without any intermediary. To introduce the state bureau as intermediary between the local fingerprint bureaus might add useless steps, costly in time, money and efficiency, apparently without adding any services not already available to local units without cost. To illustrate: a law enforcing officer can put a set of fingerprints in the mail at almost any point in North Carolina on one day and it will be in Washing-

ton the next morning to be checked against seven million sets of fingerprints, and within thirty-six hours the officer will ordinarily have his answer—earlier if he requests a telegraphic response. The FBI furnishes fingerprint cards, record sheets and franked envelopes for the officer's use. If the local officer is required to clear fingerprints through a state bureau and wait till the state bureau can clear with Washington before he gets his answer, the state bureau might contribute intolerable delay where speed is of the essence, and useless expense without any apparent advantage in the normal situation. If the local officer is required to clear with both state and national bureaus it simply means added cost without any apparent countervailing advantage except in unusual cases. If a state clearing house should nevertheless be set up and police and sheriffs of the state be required to clear through it, the estimated annual cost would be around forty thousand dollars: 1 Chief of Bureau, salary $3,000; 9 technical experts—classifying, searching and filing fingerprints, salary $1,000 each; $16,200; 4 stenographers—correspondence, preparing statistical reports, assisting in typing replies to fingerprints, salary $1,680, $7,720; 7 clerk-typists—searching of card index, checking of fingerprint records, recording prints, also assisting in typing replies to fingerprints, salary $1,500, $10,500; 1 technician for scientific and photographic work, $2,400; traveling expense, estimated, and equipment, $5,600. Total, $45,420. It is the belief of the Commission that such expenditure is unnecessary and unjustified.

SCIENTIFIC CRIME DETECTION FACILITIES IN NORTH CAROLINA

In the past years city, county and state law enforcing officers have turned for the more elementary scientific aids to local physicians, to members of medical and chemistry facilities at the University of North Carolina, Duke University and Wake Forest College, to some of the state laboratories, and to other private individuals with special skills within and without the state. In 1932 the Federal Bureau of Investigation began building in Washington a technical laboratory which today represents an investment of near a million dollars in the world's finest equipment in all fields where scientific techniques may be applied to the solution of crime. Local, state and federal law enforcing officers may send evidence to this laboratory, where it will be examined by men of training, experience and expertness in each field of scien-

tific knowledge that may be involved. These men will report back their findings and, if needed, will come to testify in court as experts in their fields—all without cost to the state or local officer or to the government he represents. City, county and state law enforcing agencies in North Carolina are already using this laboratory service.

Every law enforcing officer in North Carolina should be thoroughly acquainted with the scientific aids he may invoke in time of need. He should have within reach individuals competent to make quick and thorough examination in cases where time is of the essence and equipment for these elementary purposes is a necessity. Perhaps three or four police departments in North Carolina have begun to acquire this elementary equipment, piece by piece, as the volume of investigation work increases and convenience requires. But the cost of the equipment and of trained experts to use it place practical limitations on its installation by local units. Just as a few cities and counties have begun to supply their own law enforcing units with pieces of this laboratory equipment as finances permit and the occasion requires, so the state should supply this elementary equipment to its own law enforcing agencies as the need for it arises.

The State Bureau of Identification and Investigation has recently purchased some of the most modern scientific instruments for use in crime detection and the analysis of evidences of crime, including a comparison microscope for the comparison of bullets and shells in the identification of suspected firearms; a wide field binocular microscope; a research microscope with magnification up to 1200 times, for the examination of dust, soils, hairs, fabrics, fibers, etc., and for the study of handwriting and typewriting; a spectrometer for the preliminary examinations for evidence of poisons and other elements; and an Ultra-Violet Lamp for fluorescent examinations of papers, fibers, stains, and for the development of latent fingerprints. In addition, there are various cameras for special purposes; copying machines; magnifiers and optical glasses; projectors; firearms, handcuffs and other miscellaneous items essential to law enforcement.

The advisability of starting slowly and moving cautiously along these lines grows out of: (1) the cost of good equipment, (2) the necessity of developing skilled investigators to make use of

this equipment, (3) the many types of scientific knowledge and techniques applied to crime detection which face the state at the outset with the alternative of obtaining a trained technician in every field at a well nigh prohibitive cost, or, by making one man responsible for many fields, running the danger of obtaining a jack of all trades who is good at none, (4) the uselessness of duplicating the technical laboratory in Washington for which North Carolina taxpayers through the federal government are already paying a proportionate part.

In the event that the foregoing cautions should be overcome or disregarded and the state should start out at once to build its own crime laboratory, conservative estimates indicate that between $35,000 and $40,000 would be necessary to build a laboratory worthy of the name: Firearms Identification Section, $3,085; Chemistry Laboratory, $8,990; Questioned Documents Section, $2,800; Microanalytical Section, $6,090; Spectrographic and Spectrophotometric Section, $6,430; Forensic Psychological Department, $2,400; Photographic and Reproduction Section, $4,925; Administrative Office, $740; Miscellaneous Fund, $3,500. —Estimated Total, $38,960.

Between $25,000 and $30,000 would be required for its annual operation. It is the belief of the Commission that such expenditure is unnecessary and unjustifiable.

V

DIVISION OF CRIMINAL PROSECUTION AND CIVIL LITIGATION

A. Criminal Prosecution

A. The Department of Justice should perform the duties now being performed by the Attorney General in the prosecution of all criminal cases on appeal to the Supreme Court, but the several solicitors may be requested or permitted by the Department to assist the Attorney General on behalf of the State in criminal cases in the Supreme Court.

B. In addition to furnishing assistance to solicitors the Department will originate criminal prosecutions and participate in the prosecution of any criminal case of public interest—

(1) When the performance of the Attorney General's duties as counsel to State officials, departments, institutions and agencies requires it.
(2) When requested by the Governor.
(3) When deemed necessary by the Attorney Gen-

eral.

(4) When requested by any solicitor and the Attorney General is of the opinion the public interest requires it.

(5) When requested by either house of the General Assembly.

C. The Attorney General should have authority to require a Solicitor to prosecute in behalf of the State in the Superior Court in a district other than his own: (1) when in the opinion of the Attorney General the resident solicitor is disqualified or for any reason unable to perform his duty, (2) when in the opinion of the Attorney General it is necessary for the relief of congestion, (3) when in the opinion of the Attorney General the public interest requires it.

D. Uniform bills of cost in criminal cases in the courts should be provided and the Attorney General should be given supervision of them in the interest of uniform administration and the prevention of waste of public funds from unnecessary delays and continuances and the accumulation of unnecessary fees.

E. The existing ouster laws should be strengthened and extended so as to give the Attorney General ample power to initiate and prosecute ouster proceedings against any state officer in cases of wilful or grossly negligent failure to perform the duties of his office, together with power to direct and supervise action in similar cases involving local officers, whenever in his judgment the public interest requires it.

DISCUSSION:

From the beginning of the State's history the Attorney General has had complete control of all criminal litigation in the Supreme Court in which the State is a party or interested. The Commission is of the opinion that much good would result from the practice of permitting or requesting solicitors who have tried important criminal cases in the superior court to participate in the presentation of such cases on appeal to the Supreme Court. There are instances in which the services of a solicitor on such appeals would be of great assistance to the Department of Justice and would, at the same time, give greater satisfaction to the people of the community in which the crime occurred. This practice would continue under the supervision, direction and control of the Attorney General.

In the beginning of the State's history the Attorney General handled all criminal cases in the trial courts as well as in the Supreme Court. By 1806 the State had been divided into six districts, with the Attorney General prosecuting all criminal

cases in one district and relieved of prosecuting the docket in the other five districts by the appointment of a solicitor in each district. In 1868 the Attorney General was relieved of the responsibility of prosecuting the regular criminal docket in any district. But the General Assembly in relieving him of this responsibility in any one district, began to authorize him to prosecute in the trial courts in criminal cases in all districts: (1) in performance of his duties as counsel to state departments, agencies and institutions, (2) upon the violation of specific types of criminal statutes, (3) upon the request of the Governor *in any criminal* case, (4) upon request of either house of the General Assembly *in any criminal* case. The Commission recommends that the foregoing powers be extended along the lines indicated above. There are many instances in which a solicitor, because of some local condition, would like to have and should have the aid of the Department of Justice in the origination of criminal prosecution as well as in the actual trial of cases in the superior court. The Attorney General has frequently rendered such services in the past, and it is believed that the plan proposed would lend itself to the establishment of a more cordial relation between the office of Attorney General and that of the solicitor.

It is the belief of the Commission that with the foregoing powers of the Attorney General to intervene in criminal cases of public interest on his own initiative, supplemented by the statistical information gathered by the division of criminal and civil statistics which should focus attention of the Attorney General and the Governor on the points and places where state policy should intervene, supplemented further by the facilities of Criminal Identification and Scientific Investigation and the staff of trained investigators available to the Attorney General and to be made available by the Attorney General to solicitors and other law enforcing officers, the Department of Justice may take positive steps not heretofore taken to give direction and effectiveness to criminal prosecutions in the state.

So far as the Commission is aware, no one has tested the question whether the Attorney General in North Carolina retains his common law powers over prosecution in the trial courts. If these common law powers should be upheld, the Attorney General might exercise much greater control over criminal prose-

cutions than is contemplated in the above recommendations. The amendment to the Constitution authorizes the General Assembly in its discretion to go beyond either common law or present statutory powers and give the Attorney General as much or as little control over criminal prosecutions in the trial courts and the administration of the criminal law generally as it might desire and as conditions might warrant.

B. CIVIL LITIGATION

A. It should be the duty of the Department of Justice to perform the duties now being performed by the Attorney General in all civil matters:

(1) To appear as counsel on behalf of the State in any civil litigation in which the State has a substantial interest.

(2) To be the legal adviser of all departments, institutions and agencies of the State government, and when such departments, institutions, or agencies have legislative authority to employ attorneys all such attorneys shall be under the direction and supervision of the Attorney General.

B. Private counsel should not be employed by any of the State departments or agencies until application for the employment of such private counsel has been recommended by the Attorney General and approved by the Governor.

C. In all civil litigation in which the constitutionality of an act of the General Assembly is involved the Attorney General shall be served with a copy of the complaint or other pleadings of the litigant attacking the constitutionality of the act in question; such service to be had in the manner and within the time fixed by law for service upon the opposing litigant. If the Attorney General is of the opinion that a decision of the courts holding such act unconstitutional would prevent the State, any department, official, or agency thereof, from performing any duty or orderly function prescribed by law, it shall be his duty to appear in such litigation for the State, and no such case shall proceed to trial and judgment until it is made to appear to the presiding judge that the Attorney General has been served with the pleadings in the manner and within the time specified.

DISCUSSION:

From the beginning of the State's history the Attorney General has been considered the State's chief law officer and as late as 1925 the General Assembly named him as counsel and adviser

for all departments, agencies, institutions, commissions, bureaus, or other organized activities of the State.

In 1868 the General Assembly authorized the Governor to employ special counsel in addition to the Attorney General whenever he deemed it expedient to do so. In 1901 the General Assembly provided that when the Attorney General found it impractical to represent state departments or agencies in need of counsel, the Governor might employ such counsel as he deemed expedient, and in 1925 provided that no state department or agency should employ counsel except with the consent and approval of the Governor.

In the interest of a consistent and co-ordinated state policy the Commission is of the opinion that the employment of such counsel by any state department or agency should be on recommendation of the Attorney General, approved by the Governor, and that such counsel should be under the direction and supervision of the Attorney General. There were fourteen state departments, agencies and institutions when the General Assembly of 1868 relieved the Attorney General of the responsibility of prosecuting the criminal docket on the circuit and centered his duties largely at the state capitol as their counsel and adviser. The number of these departments and agencies increased to thirty by 1900; to fifty-three by 1919; to a hundred fifteen by 1937. These multiplying agencies with multiplying activities call for increasing legal counsel with growing knowledge and specialized skill if the State is to hold its own in Commission, Court and Council. It is the belief of the Commission that however these counsel are selected, supervision and direction should be given to their work by the State's chief law officer, in the interest of eliminating and avoiding conflicting policies, cross purposes, duplication of effort, and of co-ordinating the handling of the State's legal business.

Litigation frequently arises in which acts of the General Assembly are attacked as being unconstitutional. Sometimes judicial decisions in such cases are of far-reaching consequence to the State or some political subdivision. The Department of Justice, organized as herein outlined, would be equipped to appear in all such litigation and to protect the interest of the State or any of its agencies. Whether the State has a substantial

interest in such litigation should, of course, be left to the Attorney General to determine, but if he decides that the public interest is involved it would then become his duty to represent that interest in the litigation.

Estimated Cost. It is estimated that this division would involve no additional cost, as it would be manned by the Attorney General and his present staff together with the present full time legal staff of existing state departments such as the State Highway and Public Works Commission, the Unemployment Commission, etc., and supplemented in emergencies by the Assistant Attorneys General and staff assigned to the Division of Criminal and Civil Statistics, Codification of Laws and Legislative Drafting.

VI

SUGGESTIONS RELATIVE TO CRIMINAL SUPERVISION

Supervision over convicted offenders is now exercised by a number of agencies, such as: (1) the Probation Commission, over offenders placed in its charge by the Courts; (2) the Penal and Correctional Institutions, over offenders placed in their charge by the Courts; (3) Parole and Pardon Officials, over offenders on parole; (4) the State Board of Charities and Public Welfare with its duties of inspection and supervision, and perhaps other agencies have certain supervisory duties.

Note.—Types of punishment. The charter from the Crown in 1663 prescribed the following types of punishment for crime: fine, imprisonment, banishment, corporal punishment, mutilation and death. By 1868, mutilation was abandoned, and the pillory, stocks and whipping post were out of the picture. The Constitution prescribed three types of punishment: fine, imprisonment with or without hard labor, and death—which was limited to four offenses: murder, arson, burglary and rape. These types of punishments are in force today.

Penal and Correctional Institutions. State entry into this system of penal administration began in earnest with constitutional provision for a State Prison and a State Board of Charities in 1868. Pursuant to the Constitution of 1868 the legislature in 1869 provided for the erection of a central state prison. In the same year it provided that in the future all of the more serious

non-capital crimes were punishable by imprisonment in the state prison. In 1870 it provided for the transfer to the state prison of prisoners already sentenced to county jails for twelve months or more. Capital punishment which formerly was inflicted by hangings in the several counties by the local sheriffs was in 1909 transferred to the electric chair in the state prison under the supervision of the warden.

Further expansion of this state prison system came with the establishment of the Jackson Training School in 1907 for children under 16; with the State Industrial School for Women in 1917; with Morrison Training School for Negro Boys in 1921; with the Eastern Carolina Training School in 1923 for white boys under 18; with the Industrial Farm Colony for Women in 1927.

State Board of Charities and Public Welfare. In 1868 the General Assembly gave the State Board of Charities and Public Welfare "the supervision of all charitable and penal state institutions" and required it to inspect county jails, and all prisons and prison camps and other institutions of a penal and charitable nature and to require reports therefrom.

Probation. In the early days of the State's history the General Assembly tended to fix exact punishments for crimes. Later it began to prescribe the limits of punishment and give the judge discretion within those limits. By 1894 the judiciary had escaped those limits in the device of suspended sentence. By 1919 this device of suspended sentence developed into a full fledged systm of probation for youthful offenders under the State Board of Charities and Public Welfare, and by 1937 into a system of probation for adult offenders under the supervision of the Probation Commission.

Paroles and Pardons. From the beginning of the State's history the Governor has exercised the power of pardon, commutation and parole. Since 1925 the General Assembly has authorized him to appoint a Parole Commissioner to assist him with these duties and to supervise offenders on parole.

The co-operation of all the foregoing agencies with each other and with other links in the chain of our law enforcing machinery is necessary in the shaping of a consistent and constructive penal policy for the State.

There is need for the co-ordination of the programs and policies of all these agencies if the State is to develop a consistent and

constructive penal policy. It is further necessary that the administration of these penal policies be co-ordinated not only with each other but also with the agencies for investigation and arrest, prosecution, trial and sentence if the state is to develop an effective machinery for the administration of the criminal laws.

The criminal supervision duties of these agencies are so aligned with the administration of other governmental functions that it would be impractical at the present time, and might prove unnecessary or unwise in the future to transfer these functions to the Department of Justice. But there is no reason why the machinery of co-ordination should not be set in motion at once. With the powers of control over these agencies already vested directly or indirectly in the Governor, with expanded powers suggested for the Attorney General through the Department of Justice over investigations and prosecutions and law enforcing agencies generally, with the power and the duty of collecting and correlating statistics from the above-mentioned agencies of criminal law administration with statistics from other criminal law enforcing agencies, the stage is set for Governor and Attorney General to use the facilities of the Department of Justice and the authority vested in the Governor as the "Supreme Executive power of the State," to secure the co-operation of these agencies with each other and with officials in other links in our criminal law enforcing machinery in the shaping of a comprehensive penal policy for the State:

(1) To avoid the expense of keeping identical or overlapping records by different agencies.
(2) To make the statistical information gathered by the Division of Criminal and Civil Statistics available to all governmental agencies.
(3) To avoid unnecessary duplication in preparing, publishing and distributing statistical information by the several agencies and to extend the policy of consolidating reports recently inaugurated by the State Board of Charities and Public Welfare.

The Commission recommends that the Governor, the Attorney General and the official heads of the departments, agencies and institutions concerned be constituted a continuing commission to work toward these ends.

Estimated cost. No added cost would be involved in carrying out the suggestions here set forth.

PART II

SUPPLEMENTAL LEGISLATION

Experience has demonstrated that the effort of the General Assembly to create fixed terms of court for the several counties of the State has continually resulted in unnecessary expense and in many instances public dissatisfaction. Too frequently it happens that there is no need for a fixed term of court in one county, whereas in an adjoining or nearby county the condition of the civil and criminal dockets urgently demands relief. The number of fixed terms of court should, therefore, be reduced to a minimum, if not ultimately abolished entirely.

By making use of the statistics gathered by the division of criminal and civil statistics, terms of court could be called for each period of six months (the Spring and Fall terms) according to the needs of the counties and judges then assigned to hold these courts. If this were done the number of instances in which a term of court would convene on Monday and adjourn immediately for lack of work would be reduced to a minimum. The people of the State demand efficiency of the courts, and rightly so. The courts and the legal profession generally are subject to much just criticism because there is so much waste of time and effort under our present system of fixed terms of the superior courts.

In this connection it has become quite apparent that some provision should be made for the assignment of superior court judges to hear and dispose of litigation not requiring the services of a jury. The most practical and feasible plan suggested to the Commission is that a judge should be assigned to each judicial district for one week out of each five to hold a term of court for the hearing and disposition of all matters in chambers and any and all other litigation not requiring the services of a jury. In some of the more populous judicial districts the volume of this type of litigation has grown so large that it has become exceedingly burdensome to the judge who happens to be assigned to the courts of the district. It is not only just to the judges but to the litigant as well that this type of litigation should be heard with the same care and patience as jury cases are heard, and it is grossly unfair

to expect judges to hear and dispose of such litigation at night or after a full day's work with litigation before juries.

The studies made by the Commission reveal the anomaly of the Executive branch of the government required by the Constitution to do work properly belonging to the Judiciary in the assignment of Judges. The Chief Justice of the Supreme Court is the head of the judicial system of the State and as such he is the logical public official to order terms of court and to assign judges. The Constitution now requires the Governor to assign regular judges. It is to be noted that the language of the present Constitution contemplates that all Superior Court Judges are to be elected for specific judicial districts. Therefore this provision does not prevent the General Assembly from authorizing the Chief Justice under the present Constitution to assign Special Judges and Emergency Judges. But to give this limited authorization would result in a hybrid system.

The Commission suggests the propriety of a constitutional amendment permitting the General Assembly to authorize the election or appointment of Superior Court Judges at large who would not be required to hold courts by rotation, or to increase the number of judicial districts so as to avoid the necessity for special judges, and that in either event the authority to assign judges be given to the Chief Justice of the Supreme Court as head of the judicial system. In the meantime the Commission suggests that the information collected by the division of civil and criminal statistics in the Department of Justice will aid the Governor in assigning Judges and calling terms of court according to the needs and exigencies of the judicial system.

PART III

SUMMARY OF ESTIMATED COST AND PROBABLE ADVANTAGES OF THE DEPARTMENT OF JUSTICE AS RECOMMENDED

ATTORNEY GENERAL'S PRESENT STAFF

Attorney General. Prior to 1870 the Attorney General appears to have been compensated by fees. After 1870 his fees were supplemented by a salary. Later the fees were eliminated but he continued to supplement his salary with private practice. In 1929 he was required to give up his private practice and devote his full time to his official duties.

Assistant Attorneys General. In 1907 provision was made for the appointment of an Assistant Attorney General, in 1925 for three Assistant Attorneys General: one to be assigned to and paid by the Revenue Department, one to be assigned to and paid by the State Highway Commission, the third to be assigned directly to the Attorney General. Later one of these Assistant Attorneys General was taken from the Attorney General's staff and assigned to the State Highway and Public Works Commission. In 1937 the Attorney General was again authorized to appoint three Assistant Attorneys General.

Law Clerks. In 1935 provision was made for the employment of two law clerks. In 1937 a third law clerk was authorized.

Clerical and stenographic assistance. In 1893 provision was made for limited clerical assistance to the Attorney General. In 1907 provision was made for one full time stenographer. Three have since been added to the clerical and stenographic staff.

Present Budget. The budget for the Attorney General's office, excluding the Legislative Reference Librarian and the Assistant Attorney General assigned to the Revenue Department, was $12,646.68 for the fiscal year 1927-28; $17,873.85 for the fiscal year 1930-31; $21,409.92 for the fiscal year 1936-37; $31,678.00 for the fiscal year 1938-39.

Proposed expansion of Attorney General's staff into a Department of Justice. Provision is already made for the Attorney General's present staff of three Assistant Attorneys General, one

of whom is paid by the Revenue Department; for the legal staff of the State Highway and Public Works Commission, paid by the Commission; for the legal staff of the Unemployment Compensation Commission, paid by the Commission; etc. No added cost would be incurred therefore if the General Assembly should deem it advisable to concentrate the legal business of the State's departments, institutions and agencies in the Department of Justice under the supervision and direction of the Attorney General, as revenues from the same sources would continue to defray these expenses in the future as in the past.

Provision is already made in part for the collection of criminal statistics—in the Bureau of Identification, the Probation Commission, the Parole Commission, the Penal and Correctional Institutions, the State Board of Charities and Public Welfare, etc. To correlate these existing agencies and supplement their efforts along the lines recommended in this report would require an added annual expense of $8,300.

The division of Legislative Drafting and Codification of Statutes is already provided for in part through the budget of the Legislative Reference Librarian. In addition to these funds around $7500 would be required as an added annual expense.

The division of Criminal Law Investigation is already provided for through the addition of $1 to the bill of cost in criminal cases, half of which goes to this department, and would require no added expense to cover the present and future operations of this division.

The division of Criminal Prosecution and Civil Litigation is already provided for in the Attorney General's present staff and the legal staffs of allied departments and would call for no added expense.

The suggestions for coordinating the activities of the different agencies involved in criminal supervision would require no added expense.

The supplemental legislation involving the assignment of judges, the calling of terms of court, and the approach to a flexible system of courts would not require added expense, as the division of Criminal and Civil Statistics would supply to the Governor under the present Constitution, and to the Chief Justice

under the suggested amendment, adequate information for a scientific handling of these matters.

According to the Commission's estimates the total new expense involved in establishing the Department of Justice adequate for North Carolina's present needs amounts to $15,800.

It is to be noted that this result is reached (1) by eliminating and avoiding unnecessary duplications and overlappings among existing state agencies, (2) by co-ordinating the activities of existing state agencies with each other and with allied activities of existing federal agencies, (3) by utilizing to the fullest extent the facilities of the federal agencies engaged in the collection of criminal and civil statistics, in the collection and clearing of fingerprints and allied data concerning criminals, in the scientific investigation and detection of crime. North Carolina taxes help to pay for the support of these federal agencies and it is useless for North Carolina to duplicate in Raleigh what she is already helping to pay for in Washington. To undertake to do so would commit the state to a policy which in the course of years would easily increase the cost of a Department of Justice by a hundred thousand dollars a year.

It is the belief of the Commission that added cost would be completely absorbed by savings resulting to the taxpayers: (1) from the strict supervision of bills of cost in criminal cases (in a single case long continued and delayed and never coming to trial, accumulating witness and other fees and expenses ran the bill of costs to $1500); (2) from revenues derived from the per diem and mileage to agents of the state Department of Justice, including the State Highway Patrol attending and testifying in civil and criminal cases; (3) from the development of a flexible system of courts and the provision for scientific handling of the judicial business of the state so as to avoid lost time and lost motion with their unnecessary costs; (4) from the codification and continuous topical revision of the laws eliminating the large expense involved whenever the state undertakes this task at periodic intervals; (5) from unnecessary slips in the drafting, revision and checking of the laws which in many instances have proved costly to the state; (6) from the unnecessary multiplication of independent legal staffs in separate departments which will inevitably result unless the supervision and direction of the state's legal business

is placed in the hands of a Department of Justice representing all. In concluding this report the Commission expresses its strong belief that a Department of Justice established along the foregoing lines is not only desirable but necessary to the adequate and effective handling of the state's legal business and would result in greatly increased public service to the people of the state.

PART IV

ANALYSIS OF THE TERM "DEPARTMENT OF JUSTICE" AS IT IS USED (A) BY THE FEDERAL GOVERNMENT, (B) BY STATE GOVERNMENTS, AND (C) BY THE COMMISSIONERS ON UNIFORM STATE LAWS

I

In August 1934 the American Bar Association recommended "the creation in each state, of a State Department of Justice" and requested "the Commissioners on Uniform State Laws . . . to outline an act for the establishment of such . . . Department . . . so drawn as to be adaptable to various state conditions."[1] Pursuant to this request the Commissioners on Uniform State Laws appointed a Committee with Charles V. Imlay of Washington, D. C., Chairman. On June 1, 1935, this Committee submitted a tentative draft of a Uniform State Department of Justice Act.[2] In 1937, the North Carolina General Assembly authorized the Governor to appoint a commission "to make a study of the advisability and feasibility of establishing a State Department of Justice."[3]

This analysis inquires into the meaning of the words "Department of Justice" as they are used (1) by the federal government, (2) by state governments, and (3) by the Commissioners on Uniform State Laws, for the information of Bar Associations and officials in those states which, like North Carolina, are considering the advisability of establishing State Departments of Justice pursuant to the recommendations of the American Bar Association.

II

United States Department of Justice. "There shall be at the seat of government," says a federal statute enacted in 1870, "an executive department to be known as the Department of Justice, and an Attorney General, who shall be the head thereof."[4] The federal government from the beginning has applied these words to both criminal and civil law administration.

Criminal Law Administration. Pursuant to this statute the Attorney General of the United States, appointed by the President, was authorized: (1) to appoint officials with the authority to conduct investigations regarding official matters under the control of the Department of Justice,[5] (2) to appoint officials with the authority to detect and prosecute crimes against the United States,[6] (3) to establish scientific crime detection laboratory, and collect, classify, and exchange criminal identification records and crime statistics,[7] (4) to exercise general superintendence and direction over the attorneys and marshals of all the districts in the United States and the Territories,[8] (5) to approve the selection of probation officers, formulate rules and prescribe records and statistical forms for the proper conduct of probation work,[9] (6) to appoint the Director of the Federal Bureau of Prisons established in the Department of Justice, who is to serve directly under the Attorney General,[10] (7) to appoint a Board of Parole, consisting of three members, which shall establish rules and regulations for parole procedure to be approved by the Attorney General.[11]

The words "Department of Justice," as used by the federal government in criminal law administration, therefore, mean a unified and centralized control by the Attorney General of agencies for (1) the investigation of crime and the apprehension of criminals, (2) the acquisition, preservation and exchange of criminal

identification records, (3) the prosecution, (4) probation, (5) punishment and (6) parole of persons charged with crime. In the words of the Attorney General's personal representative: "Here, under the single direction of the Attorney General are all of the mechanisms that deal with criminal justice, from the time of the arrest to the time of the release of the prisoner from confinement; . . . from the inception of a case to its conclusion, from the snatching of a man from the rest of society to the time when he is returned, he remains in the custody of one responsible agency."[12]

Civil Law Administration. Pursuant to the foregoing statute the Attorney General is also required: (1) appellate court duties: to conduct and argue suits and writs of error and appeals in the Supreme Court where the United States is interested;[13] (2) trial court duties: to conduct any kind of legal proceeding in which the United States is interested in any court and to exercise general superintendence and direction over the attorneys and marshalls of all the districts in the United States and the Territories;[14] (3) advisory duties: upon request to advise the President of the United States and the head of any executive department on matters of law arising in the administration of their respective departments and to supervise and control the Solicitors of executive departments including the Departments of State, Treasury, Interior, Commerce, Labor and Bureau of Internal Revenue;[15] (4) legislative drafting: in practice the Attorney General's office usually drafts the laws in which it is directly interested and may be called upon by other departments or by members of the Congress to draft or assist in drafting legislation in which they are interested, though the official legislative drafting bureau is a separate agency directly under the Congress;[16] (5) court statistics: to require the several district attorneys to report to him "an account of their official proceedings . . . in such time and manner as (he) may direct;"[17] through such reports the Attorney General's office keeps in constant touch with the status of civil suits affecting the government in the federal courts throughout the country.

"To avoid conflicts of jurisdiction and to achieve better co-ordination, uniformity, certainty, simplicity and economy," says the Attorney General's personal representative, "the governmental program has been to center the major part of all legal problems of all federal agencies in this Department . . . . The Department itself is divided into a number of primary divisions or bureaus, presided over by the Solicitor General, Assistant Attorneys General and Directors. In these primary divisions there are also carefully prescribed subdivisions organized, fitted and trained to handle specific lines of work. The functions and duties of all these different departments and their heads and subheads are defined and supervised so as to mesh in with the operations of the Department as a whole. Over it all and centering in him as the trunk of this huge tree of many limbs is the Attorney General as the nation's chief law officer."[18]

III

STATE DEPARTMENTS OF JUSTICE

A. INTRODUCTORY

In addition to the United States Department of Justice, established in 1870, seven states have expressly created a "Department of Justice": Iowa in 1909,[19] Nebraska in 1919,[20] Louisiana in 1921,[21] Pennsylvania in 1923,[22] New Mexico in 1933,[23] Rhode Island,[24] and South Dakota in 1935.[25] California reached the

same result in 1934 without the use of the words.[26] Two of these states have provided for these departments through constitutional amendment: California and Louisiana.[27] The other six states and the federal government provided for them by statute without constitutional amendment. In the federal government and in seven states the Department is headed by the Attorney General. In one state: South Dakota, it was at first headed by a commission consisting of the Governor, Attorney General and Warden of the State Penitentiary, who selected the Superintendent to run it.[28] In seven of these states the Attorney General is elected by the people; in one, Pennsylvania, he is appointed by the Governor.[29] The Uniform State Department of Justice Act recommends that the Department be headed either by the Attorney General or by a Director General appointed by the Governor.[30]

B. CRIMINAL LAW ADMINISTRATION

The Attorney General's Control over Police in states with Departments of Justice varies from direct supervision and control to no control and little supervision. To illustrate: *in California*[31] he may appoint as many as ten special agents "with full law enforcing powers throughout the state to serve at his pleasure;" he is given "direct supervision over every . . . sheriff in all matters pertaining to the duties of his office, he may at any time appoint another to perform the duties of sheriff with respect to the investigation of any particular crime;" and, in the words of the constitutional amendment, he may be given "direct supervision over . . . such other law enforcement agencies as may be designated by law." In *Iowa*[32] and *South Dakota*[33] he is given supervision over a staff of state investigators or peace officers with power to enforce laws throughout the state with or without the aid of local officers, but no direct supervision or control over sheriffs or police. In some of these states he can call any peace officer to his assistance and make him a member of his staff for the time being. In *New Mexico*[34] he has been made a member of the board of managers of the State Police and may require reasonable assistance of all peace officers in the investigation of crimes. In *Louisiana*, *Nebraska*, *Pennsylvania*, and *Rhode Island* he has no direct supervision or control over state or local investigative officers or police. Under the Uniform State Department of Justice Act he may require written reports from city, county and state police and aid them on their request or on the request of the Governor.[35]

The Attorney General's Control over Prosecution in states with Departments of Justice varies from direct supervision and control to neither control nor supervision. *In appellate court proceedings:* The Attorney General's power over appellate criminal court proceedings in states having Departments of Justice varies from the duty to prosecute and defend all criminal cases, in which the State is a party or interested, in seven states—California,[36] Iowa,[37] Louisiana,[38] Nebraska,[39] New Mexico,[40] Rhode Island[41] and South Dakota[42]—to the duty to prosecute in the appellate courts only the cases he has prosecuted in behalf of state agencies in the trial courts and the duty to prosecute in specific cases where he is authorized by law to appear, as in Pennsylvania;[43] and even in Pennsylvania, the statutory powers are broadened by common law powers.[44] In *Rhode Island* he is given power to appoint all prosecuting attorneys. In *California*[45] he is given "direct supervision over every District Attorney . . . in all matters pertaining to the duties of" his office including full power to assist a district attorney or supersede him and take full charge of prosecution for any violations of law "whenever in his opinion any law of the state is not being ade-

quately enforced and the public interest requires." In *Louisiana*[46] and *Iowa*[47] he is given power to "exercise supervision over the several district attorneys throughout the state;" and to intervene and supersede the district attorney in any criminal proceeding when in his opinion the public interest requires, and his action can not be questioned in any court. In *Nebraska*[48] and *South Dakota*[49] he has no direct power to supervise prosecuting attorneys, but is given concurrent power with prosecuting attorneys in all counties of the state to initiate and carry forward prosecutions through all steps in the proceedings. In *Pennsylvania* he has no statutory power to supervise prosecuting attorneys; according to the statute he may intervene in local prosecutions when the presiding judge requests him in writing to do so; when he does intervene on such request he supersedes the district attorney.[50] The scope of this statutory power to intervene has been considerably broadened by a recent decision holding that the Pennsylvania Attorney General has full common law powers.[51] Under the Uniform State Department of Justice Act he may (1) require written reports from state and local prosecuting attorneys and may assist or supersede them in any cases on their request or on the request of the Governor, or (2) he may be given exclusive direction or control of all criminal proceedings in all courts of the state, or (3) the Governor may appoint all prosecuting attorneys with the consent of the Senate.[52]

The Attorney General's Control over Criminal Identification Units in states with Departments of Justice varies from direct supervision and control to neither control nor supervision. To illustrate: In *Iowa*,[53] *New Mexico*,[54] *South Dakota*[55] and *Rhode Island*[56] the Identification Bureau is set up in the Department of Justice with the Attorney General as head. In *California*[57] and *Nebraska*[58] it is attached to the Governor's office and in *Pennsylvania*[59] and *Louisiana*[60] to the State Police, and in all five states is outside the Department of Justice and free from the control of the Attorney General. "Bureaus of Criminal Identification" . . . include different things in different states: in practically all states they include fingerprint bureaus; to this nucleus some states add elementary laboratories with scientific crime detecting facilities, or the state system of radio communications, or a staff of special investigators, or the collection of criminal statistics. The Uniform Department of Justice Act provides for a "Division of Criminal Identification, Investigation and Statistics" with power to create and organize such laboratories and other facilities as may be necessary. It likewise provides for a separate "Division of Medical Examiners" to report to the Attorney General and receive aid from upon request.[61]

The Attorney General's Power over Probation in states with Departments of Justice and in the Uniform State Department of Justice Act appears to be nonexistent.

The Attorney General's Power over Prisons, Pardons, and Paroles in states with Departments of Justice varies from a limited supervision and control to none at all. Apparently prisons in states having Departments of Justice are in all cases under the control of managers, department heads, commissions or boards named by the Governor—in some instances by and with the consent of the senate.[62] The practice as to parole boards varies. To illustrate: In *Pennsylvania*[63] the Board of Pardons and Paroles is in the Department of Justice; the Attorney General is a member of the Board and appoints the parole supervisor, and the Governor can not pardon or parole except on the Board's recommendation. In *California*,[64] *Nebraska*,[65] *Louisiana*,[66] and *South Dakota*[67] the Attorney General is simply a member of a board of pardons or paroles not included in the Depart-

ment of Justice. In *Iowa*[68] *New Mexico*[69] and *Rhode Island*[70] he is not a member of either one of these boards and exercises no control over their policies. The Uniform State Department of Justice Act provides that the Board of Pardons and Paroles shall make written reports to the Attorney General as head of the Department of Justice or that the Attorney General shall be made a member of the Pardon and Parole Board. It likewise provides that the Attorney General may require reports of the Board of Prisons or that the Board of Prisons be made a part of the Department of Justice and the Attorney General a member thereof.[71]

C. CIVIL LAW ADMINISTRATION

The Attorney General's power over appellate civil court proceedings in states having Departments of Justice varies from the duty to prosecute and defend all civil cases in which the state is a party or interested in the Supreme Court in seven states—California, Iowa, Louisiana, Nebraska, New Mexico, Rhode Island and South Dakota—to the duty to prosecute and defend in specific cases where he is authorized by law to appear, as in Pennsylvania; and even in Pennsylvania his statutory powers are broadened by common law powers.[72]

The Attorney General's power over trial court proceedings in civil cases in states having Departments of Justice varies from the duty to appear in all civil cases in which the State is a party or interested, as in Rhode Island,[73] (except in cases of town prosecuting attorneys), to the duty to appear only when the Attorney General deems it advisable or when requested to appear by the Governor or General Assembly as in Iowa,[74] Louisiana,[75] Nebraska,[76] South Dakota[77] or New Mexico.[78] In all states having departments of justice he is directed to appear in civil suits to enforce specific laws and is required to represent state departments and agencies, although some statutes seem to limit the requirement to specifically named departments.[79]

The Attorney General's duty to advise state officials in states having Departments of Justice varies: from the duty to advise state department heads and officials as in California, Iowa, Louisiana, Nebraska, New Mexico, Pennsylvania, and Rhode Island,[80] to the duty to advise specific state agencies as in South Dakota.[81] The duty to advise local officials varies from the duty to advise *all prosecuting attorneys* as in California,[82] Iowa,[83] New Mexico,[84] and South Dakota,[85] to the absence of any duty to advise any local official, as in Louisiana, Nebraska, Pennsylvania and Rhode Island. To some extent unofficial opinions are from time to time given to local officials in practically all these states.

The Attorney General's power over special counsel varies from the power to approve the hiring of all special counsel in some states, to the power of hiring no special counsel in other states. To illustrate: he may appoint special counsel only on the Governor's approval in Pennsylvania.[86] He may appoint special counsel on his own initiative in a few specified instances in Louisiana and California, and even in some instances in Louisiana he must have the Governor's approval.[87] In other States having Departments of Justice, the Attorney General apparently has no power to appoint special counsel. In California, eleven named state departments and commissions may provide their own counsel, and the Governor is authorized to appoint special counsel only in specified cases.[88] In Louisiana, state departments and bureaus are authorized to hire special counsel on a contingent fee basis.[89] There appear to be no general laws providing for special counsel in South Dakota or New Mexico, but appropriations laws from time to time provide funds for special counsel in the Attorney General's department in Rhode Island.[90]

The Attorney General's power over legislative drafting bureaus, in those states having Departments of Justice, appears to be non-existent. In practice, Attorney Generals, according to their reports, have always assisted State departments and agencies in drafting measures in which they are interested. Legislative drafting bureaus have been set up in many states.[91]

None of the states having departments of justice appear to provide for the collection of civil court statistics, with the possible exception of California where the Attorney General is required to keep a docket showing the status of all civil cases in which the State is interested or a party.[92] Many Attorney Generals include summaries of the civil cases in which they have appeared in their annual reports.

D. COMMON LAW POWERS OF ATTORNEY GENERAL

To the foregoing statutory powers of Attorney Generals some states add common law powers. To illustrate: in 1936 the Supreme Court of Pennsylvania concluded "from the review of decided cases and historical and other authorities that the Attorney General of Pennsylvania is clothed with the powers and attributes which enveloped Attorney Generals at the common law, including the right to investigate criminal acts, to institute proceedings in the several counties of the commonwealth, to sign indictments, to appear before the grand jury and submit testimony, to appear in court and to try criminal cases on the commonwealth's behalf, and in any and all these activities to supersede and set aside the district attorney when in the Attorney General's judgment such action may be necessary."[93] Some courts, as in Pennsylvania, have held that the Attorney General retains his common law control over criminal prosecutions unless and until the legislature takes it from him; at least one state appears to hold that the legislature cannot take it from him,[94] and between these extremes courts in other states play variations to their own local tunes. The distribution among District Attorneys of powers exercised in colonial beginnings by the Attorney General alone, does not necessarily mean that the Attorney General's common law powers have been exhausted, nor does the fact that the common law powers of the Attorney General in a particular state have never been invoked necessarily mean that they have died by lack of exercise. "The district attorney," said Justice Brewster of the New York Supreme Court in 1936, quoting from an earlier decision, "by statute and by a long continued practice, has succeeded to some of the powers of the Attorney General within the respective counties, but he has not supplanted him . . . The nonuser of those powers during the past century has not in my opinion destroyed them."[95]

Most of the cases invoking the common law powers of the Attorney General have been concerned with the administration of the criminal law; but there appears to be no reason why states recognizing this common law power in criminal matters should not also recognize it in civil matters. And those cases invoking this common law power in criminal law administration have been largely confined to that phase of criminal law administration dealing with criminal prosecution. There is no unanimity of opinion on the extent to which these common law powers went in England, nor on the extent to which they might be carried in this country.

Summary. It is apparent from the foregoing analysis that the words "Department of Justice" have a convenient vagueness. They mean different things in different states at the same time. They mean everything from highly centralized control of all the agencies involved in the administration of criminal and civil law in some states, to highly decentralized control in others, and to all stages

of centralization and decentralization in between. Many states without Departments of Justice have as greatly centralized control as states with such departments. To illustrate: of twenty states permitting the Attorney General to intervene in any criminal proceeding upon his own initiative and assume control of the prosecution,[96] less than half have "Departments of Justice;" of eleven states giving the Attorney General concurrent power with local prosecuting attorneys,[97] hardly half have "Departments of Justice;" of two states giving the Attorney General power to appoint local prosecutors, one has a "Department of Justice". And common law powers may be invoked to modify the picture further.

Not only do the words "Department of Justice" mean different things in different states at the same time—they mean different things in the same states at different times. To illustrate: In 1935, a Department of Justice was established in South Dakota, under the control of the Governor, Attorney General and Warden of the State Penitentiary, with four divisions: Motor Patrol, Inspections, Identification, and Investigation and Secret Service;[98] in 1937, a complete reorganization was effected: the Motor Patrol Division was transferred to the Highway Commission, the Inspections Division to the Agriculture Department, and the Identification, Investigation and Secret Service Divisions to the Attorney General's Department.[99] In 1933, a Department of Justice was established in New Mexico under the control of the Attorney General;[100] in 1935, a Bureau of Identification and a Division of State Police were set up in the Department of Justice;[101] in 1937, the Division of State Police was set up independently under a board consisting of the Governor and two members appointed by him, and the bureau of Identification was incorporated in the State Police Department.[102] In 1923, a Department of Justice was established in Pennsylvania; but the words "Department of Justice" merely gave a new name to the Attorney General's Department;[103] in 1929, broad statutory powers of criminal law administration were granted to the Pennsylvania Department of Justice.[104] Similarly, in other states, powers have from time to time been added to, and subtracted from, "Departments of Justice" since they were first established.

Likewise in the federal government they have meant different things at different times. In 1870 the Congress transferred the law officers and solicitors of various departments to the Department of Justice with the Attorney General as head, gave him supervision and control over them, and further provided that the various department heads could not employ special counsel without his consent and approval.[105] Since 1870 the Congress has from time to time given new content and meaning to the words "Department of Justice" as the activities of the Federal Government have expanded.[106]

The American Bar Association in 1934 apparently confined its use of the words "Department of Justice" to the administration of the Criminal Law; so did the Attorney General's Crime Conference in Washington in 1934; so did the Commission on Uniform State Laws in 1935. But the United States applies them to criminal and civil law administration. And different states having Departments of Justice apply them differently: some states have simply taken previously existing Attorney Generals' departments having civil and criminal duties, christened them "Departments of Justice" and left them largely as they were; some states have simply added criminal law enforcing agencies to the Attorney General's Office and applied the term "Department of Justice" to these agencies; some states have added new criminal law enforcing agencies to the Attorney General's office, integrated them with other criminal and civil activities of the Attorney General's office and renamed the whole a "Department of Justice."

FOOTNOTES

1. Rep. Am. Bar. Assoc. (1934) 113.
2. National Conference of Commissioners on Uniform State Laws, Report of Committee on Uniform State Department of Justice Act, (1935).
3. Resolution 29, N. C. General Assembly (1937).
4. 5 U. S. C. A. sec. 291 (1927).
5. "For investigation regarding official matters under the control of the Department of Justice and the Department of State as may be directed by the Attorney General, the Attorney General is authorized to appoint officials who shall be vested with the authority necessary for the execution of such duties." 5 U. S. C. A. sec. 299 (1927).
6. "For the detection and prosecution of crimes against the United States, and for the acquisition, collection, classification and preservation of criminal identification records and their exchange with the officials of states, cities, and other institutions, the Attorney General is authorized to appoint officials who shall be vested with the authority necessary for the execution of such duties." 5 U. S. C. A. sec. 300 (1927). Subsequent statutes authorized these agents to make arrests, and to carry firearms: "The Director, Assistant Directors, Agents, and Inspectors of the Division of Investigation of the Department of Justice are empowered to serve warrants and subpoenas issued under the authority of the United States; to make seizures under warrant for violation of the laws of the United States; to make arrests without warrant for felonies which have been committed and which are cognizable under the laws of the United States, in cases where the person making the arrest has reasonable grounds to believe that the person so arrested is guilty of such felony and where there is a likelihood of the person escaping before a warrant can be obtained for his arrest, but the person arrested shall be immediately taken before a committing officer. Such members of the Division of Investigation of the Department of Justice are authorized amd enpowered to carry firearms." 5 U. S. C. A. sec. 300a (Supp. 1936).
7. Id.
8. "The Attorney General shall exercise general superintendence and direction over the attorneys and marshals of all the districts in the United States and the Territories as to the manner of discharging their respective duties; and the several district attorneys and marshals are required to report to the Attorney General an account of their official proceedings, and of the state and condition of their respective offices, in such time and manner as the Attorney General may direct." 5 U. S. C. A. sec. 317 (1927).
9. After making provision for the appointment of certain probation officers to serve without compensation, it is further provided, ". . . that in case it shall appear to any . . . judge that the needs of the service require that there should.be a salaried probation officer, such judge may appoint one such officer and shall fix the salary of such officer subject to the approval of the Attorney General in each case." 18 U. S. C. A. sec. 726 (1927). "The probation officer . . . shall make such reports to the Attorney General as he may at any time require." 18 U. S. C. A. sec. 727 (1927). "The Attorney General, or his authorized agent, shall in-

vestigate the work of the probation officers and make recommendations concerning the same to the respective judges and shall have access to the records of all probation officers. He shall collect for publication statistical and other information concerning the work of the probation officers. He shall prescribe record forms and statistics to be kept by the probation officers and shall formulate general rules for the proper conduct of the probation work. He shall endeavor by all suitable means to promote the efficient administration of the probation system and the enforcement of the probation laws in all United States courts. He shall incorporate in his annual a statement concerning the operation of the probation system in such courts." 18 U. S. C. A. sec. 726 (1936 Supp.).

10. "There is established in the Department of Justice a Bureau of Prisons, to be in charge of a director, who . . . shall be appointed by and serve directly under the Attorney General . . . all of the authority, powers, and duties conferred by law or regulation upon the Superintendent of Prisons or any of his subordinates are hereby transferred to the Bureau of Prisons. The Attorney General shall have the power to appoint such additional officers and employees as may be necessary." 18 U. S. C. A. sec. 753 (1936 Supp.). "The Bureau of Prisons shall have charge of the management and regulation of all Federal penal and correctional institutions and shall be responsible for the safekeeping, care, protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States." But neither section applies to military penal or military reformatory institutions. 18 U. S. C. A. sec. 753a (1936 Supp.).
11. 18 U. S. C. A. secs. 723a, 723b (1936 Supp.).
12. Stanley, William (Assistant to the Attorney General of the United States), How the Department of Justice Functions, in Proceedings of the Attorney General's Conference on Crime (1934) 310, 311.
13. 5 U. S. C. A. sec. 309 (1927).
14. See note 8, supra.
15. "The Officers of the Department of Justice, under the direction of the Attorney General, shall give all opinions and render all services requiring the skill of persons learned in the law necessary to enable the President and heads of departments, and the heads of bureaus and other officers to the departments, to discharge their respective duties . . ." 5 U. S. C. A. sec. 306 (1927). See also 5 U. S. C. A. sec. 296 (1927) in re customs matters; 5 U. S. C. A. sec. 297 (1927) in re Solicitors for separate departments to act under Attorney General's direction; 5 U. S. C. A. Secs. 298, 299 (1927); in re matters arising in Departments of Justice or State; 5 U. S. C. A. sec. 303 (1927) in re opinions required by the President; and 5 U. S. C. A. sec. 304 (1927) which provides: "The head of any executive department may require the opinion of the Attorney General on any questions of law arising in the administration of his department."
16. 2 U. S. C. A. secs. 271-277 (1927).
17. 5 U. S. C. A. sec. 316 (1927).
18. Stanley, William (Assistant to the Attorney General of the United States), How the Department of Justice Functions, in Proceedings of the Attorney General's Conference on Crime (1934) 306.
19. Iowa Code (1935) c. 12, sec. 148.
20. Neb. Comp. Stat. (1929) c. 84, art. 2, sec. 11.

21. La. Const. (1921) art. VII, sec. 55.
22. 71 Pa. Stat. Ann. (Purdon, 1930) art. 2, sec. 11.
23. N. M. Pub. Laws 1933, c. 21, sec. 1.
24. R. I. Pub. Laws 1935, c. 2250.
25. S. D. Pub. Laws, 1935, c. 96. This department was abolished in 1937, but a discussion of the South Dakota set-up is useful for purposes of comparison.
26. Cal. Const. art. V, sec. 21 (adopted in 1934).
27. See notes 21 and 26, supra.
28. In 1937 the four divisions of the South Dakota Department of Justice were transferred: the Division of Motor Patrol to the Highway Commission; the Division of Inspections to the Secretary of Agriculture; and, the Division of Investigation and Secret Service and the Division of Identification to the Attorney General's Department. S. D. Pub. Laws 1937, cc. 102, 103, 14.
29. 71 Pa. Stat. Ann. (Purdon, 1930) sec. 811.
30. Uniform State Department of Justice Act. secs. 2, 2a.
31. Cal. Pol. Code (Deering Supp., 1935) secs. 476-479.
32. Iowa Code (1935) c. 615, sec. 13411.
33. S. D. Pub. Laws 1935, c. 97, sec. 6(3); Pub. Laws 1937, c. 104, sec. 3.
34. N. M. Comp. Stat. (1929) c. 33, art. 4433.
35. Uniform State Department of Justice Act, sec. 7.
36. Cal. Pol. Code (Deering, 1931) sec. 470.
37. Iowa Code (1935) c. 12, sec. 149.
38. La. Const. art. VII, sec. 55. District attorneys are required to prepare briefs in criminal cases appealed from their respective districts. La. Code Crim. Proc. (Dart, 1932) art. 22.
39. Neb. Comp. Stat. (1929) c. 84, art. 205.
40. R. I. Gen. Laws (1923) sec. 294.
41. N. M. Pub. Laws (1933) c. 21, 2.
42. S. D. Comp. Laws (1929) sec. 5364.
43. Sec. 71 Pa. Stat. Ann. (Purdon, 1930) secs. 294, 297.
44. Commonwealth v. Margiotti, 325 Pa. 17, 188 Atl. 524 (1936).
45. See note 26, supra.
46. La. Pub. Laws (1934) (1st Ex. Sess.) No. 24, sec. 1.
47. Iowa Code (1935) c. 12, sec. 149.
48. Neb. Comp. Stat. (1929) c. 54, art. 203. According to the Nebraska Attorney General's office, the Attorney General can require the assistance of county attorneys.
49. S. D. Pub. Laws 1931, c. 129.
50. 71 Pa. Stat. Ann. (Purdon, 1930) secs. 294, 297.
51. Commonwealth v. Margiotti, 325 Pa. 17, 188 Atl. 524 (1936).
52. Uniform State Department of Justice Act, secs. 5, 5a, 5b.
53. Iowa Code (1935) c. 616.
54. N. M. Pub. Laws 1935, c. 149.
55. See note 29, supra (transfer of Division of Identification from the Department of Justice to the Attorney General's Department).
56. R. I. Pub. Laws 1927 (Jan. Sess.), c. 977; R. I. Pub. Laws (1935) (May Sess.), c. 2250.
57. Cal. Gen. Laws (Deering, 1921) Act 1904, secs. 1-15.
58. Neb. Comp. Stat. (1929), c. 29, arts. 208-210.

59. 19 Pa. Stat. Ann. (Purdon, 1930) secs. 1401-1406.
60. La. Code Crim. Proc. Ann. (Dart, Supp., 1936) secs. 708.1-708.24.
61. Uniform State Department of Justice Act, sec. 8.
62. Cal. Pol. Code (Deering, 1931) Act 1929; Iowa Code (1935), c. 188; La. Crim. Code Ann. (Dart, 1932) art. 1427; Neb. Comp. Stat. (1929) c. 83, arts. 101, 109; N. M. Pub. Laws 1929, c. 130, secs. 101, 135; 71 Pa. Stat. Ann. (Purdon, 1930) secs. 62, 67-69, 111, 592, 593, 607, 608; R. I. Gen. Laws (1923) sec. 6478, R. I. Pub. Laws 1935 (May Sess.), c. 2250; S. D. Const. art. XIV, secs. 1, 2; S. D. Comp. Laws (1929) secs. 5371, 5375.
63. Pa. Const., art. 4, sec. 9; 71 Pa. Stat. Ann. (Purdon, 1930) secs. 12, 62, 113.
64. Cal. Gen. Laws (1931) Act 1908, as amended by Cal. Pub. Laws 1935, p. 2261.
65. Neb. Const. art. IV, sec. 13.
66. La. Const. art. V, sec. 10; La. Code Crim. Proc. (Dart, 1932) arts. 725-735.
67. S. D. Const. art. IV, sec. 5.
68. See Iowa Code (1935) c. 128; Iowa Const. art. IV, sec. 16.
69. See N. M. Const. art. V, sec. 6.
70. See R. I. Pub. Laws 1935 (May Sess.), c. 2250.
71. Uniform State Department of Justice Act, secs. 9, 10.
72. See notes 36-44, supra.
73. R. I. Gen. Laws (1923) secs. 295-298.
74. Iowa Code (1935) c. 12, sec. 149.
75. La. Const. art. VII, sec. 56.
76. Article 205 of Chapter 84 of Neb. Comp. Stat. (1929) provides that it shall be the duty of the Attorney General "when requested by the Governor . . . to appear for the state and prosecute or defend any action or conduct any investigation in which the state is interested or a party before any court, officer, board or tribunal or commission." The Nebraska Attorney General does not construe this statute as authorizing the Governor to direct the Attorney General to appear in court.
77. S. D. Comp. Laws (1929) sec. 5364.
78. N. M. Pub. Laws 1933, c. 21, secs. 2(b), 2(i).
79. Cal. Pol. Code (Deering, 1931) sec. 470; Iowa Code (1935) c. 12, sec. 149; La. Const. art. VII, sec. 55; Neb. Comp. Stat. (1929) c. 84, art. 205; N. M. Pub. (1933) c. 21, sec. 3; 71 Pa. Stat. Ann. (Purdon, 1930) secs. 292, 293; R. I. Gen. Laws (1923) secs. 294-296; S. D. Comp. Laws (1929) sec. 5364.
80. Cal. Pol. Code (Deering, 1931) sec. 470; Iowa (1935) c. 12, sec. 149; La. Const. art. VII, sec. 55; Neb. Comp. Stat. (1929) c. 84, art. 203; N. M. Stat. Ann. (Courtright, 1929) secs. 134-301; 71 Pa. Stat. Ann. (Purdon, 1930) sec. 292; R. I. Gen. Laws (1923) sec. 297.
81. S. D. Comp. Laws (1929) sec. 5364.
82. Cal. Const. art. V, sec. 21.
83. Iowa Code (1935) c. 12, sec. 149.
84. N. M. Stat. Ann. (Courtright, 1929) sec. 134-301.
85. S. D. Comp. Laws (1929) sec. 5364. According to the South Dakota Attorney General's office, the Attorney General's opinions are binding on all state departments and officials until overruled by a court of competent jurisdiction.
86. 71 Pa. Stat. Ann. (Purdon, 1930) sec. 296.

87. Cal. Pol. Code (Deering, 1931) sec. 470; e. g. La. Gen. Stat. Ann. (Dart, 1937 Supp.) sec. 7411.1. In Nebraska, the power to approve hiring of special counsel rests with the Governor and the Attorney General, whose power is broad, but not exclusive.
88. Cal. Pol. Code (Deering, 1933 supp.) sec. 473a.
89. La. Gen. Stat. Ann. (Dart, 1937 Supp.) sec. 7411.2.
90. e. g., R. I. Pub. Laws 1925 (Jan. Sess.), c. 128.
91. Cal. Gen. Laws (1931) Act. 4259 (head selected by general assembly; Iowa Code (1935) sec. 4518(4) (law librarian of state library acts as head); Neb. Comp. Stat. (1929) c. 50, secs. 401-407 (affiliated with state university); N. M. Stat. Ann. (Courtright, 1929) secs. 134-801-134-803 (head selected by specified state officials); 46 Pa. Stat. Ann. (Purdon, 1936) secs. 451-460; R. I. Gen. Laws (1923) secs. 461, 462; R. I. Pub. Laws 1935 (May Sess.), c. 2250, sec. 21 (set up in state library in Department of state.)
92. Cal. Pol. Code (Deering, 1931) sec. 470.
93. Commonwealth v. Margiotti, 325 Pa. 17, 188 Atl. 524, 530 (1936).
94. Saxby v. Sonneman, 318 Ill. 600, 606, 149 N. E. 526, 529 (1925).
95. People v. Tru-Sport Pub. Co., Inc. et al., 160 Misc. 628, 291 N. Y. Supp. 449, 460 (1936).
96. De Long, Powers and Duties of the State Attorney General in Criminal Prosecution, 25 Journal of Criminal Law and Criminology 358, 390 et seq. (1934-35).
97. Id. at 385 et seq.
98. S. C. Pub. Laws 1935 c. 96.
99. S. D. Pub. Laws 1937, cc. 102, 103, 104.
100. N. M. Pub. Laws 1933, c. 21.
101. N. M. Pub. Laws 1935, cc. 119, 149.
102. N. M. Pub. Laws 1937, c. 35.
103. 71 Pa. Stat. Ann. (Purdon, 1930) art. II, sec. 11.
104. 71 Pa. Stat. Ann. (Purdon, 1930) sec. 294.
105. 5 U. S. C. A. secs. 296, 297, 303-315 (1927).
106. See notes 3-18, supra.